



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AY/LDC/2021/0026P**

Property : **1-18 Lydwell House, Albion Avenue,
London SW8 2AG**

Applicant : **The Mayor and Burgesses of the
London Borough of Lambeth**

Representative : **In-house**

Respondents : **William John White (Flat 8),
Amelia Menezes Crawshaw (Flat
12A) and Adrian Tugman Benbow
(Flat 14)**

Type of application : **Dispensation from compliance with
statutory consultation
requirements**

Tribunal members : **Judge P Korn
Ms F Macleod MCIEH**

Date of decision : **29th April 2021**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondents did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal dispenses unconditionally with those of the consultation requirements not complied with by the Applicant in respect of the qualifying works which are the subject of this application.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in relation to certain qualifying works.
2. The qualifying works which are the subject of this application comprise the replacement of the hot water system including the fitting of a water treatment device. The works have been carried out in full and therefore this is a request for retrospective dispensation.
3. The Property is a purpose-built block of 18 flats, only 3 of which are held on long leases. The Respondents are the 3 long leaseholders.

Applicant’s case

4. In July 2020 it was identified that the direct-fired gas water heater had a leaking heat exchanger which required replacement. The Applicant instructed its contractor, OCO Limited, to assess the problem and to provide a quote. OCO Limited is a company with which the Applicant has an existing qualifying long-term agreement on which it has fully consulted.
5. On 20th July 2020 OCO Limited provided a quote, a copy of which is in the electronic bundle. On receiving the quote, the Applicant realised that it exceeded £250 per flat and therefore required compliance with Schedule 3 of the relevant statutory consultation regulations.
6. On 3rd August 2020 the Applicant served on each of the Respondents a Notice of Intention which was compliant with Schedule 3 of the regulations and which invited observations by no later than 6th September 2020. None of the Respondents made any observations.
7. On 4th August 2020 the hot water system failed, as confirmed by an email from the Applicant’s Heating Engineer to the Homeownership Major Works Coordinator. This resulted in residents being without hot water, and so the Applicant made the decision to instruct OCO Limited to commence works immediately even though this meant cutting short the consultation process. OCO Limited were on site on 5th August 2020 and the works were completed on 11th August 2020.

8. On 5th October 2020 the Applicant wrote to each of the Respondents to advise that the works had to be carried out on an emergency basis.

Responses from the Respondents

9. There have been no objections from any of the Respondents to the application.

The relevant legal provisions

10. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *“the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal”*.
11. Under Section 20ZA(1) of the 1985 Act *“where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”*.

Tribunal’s analysis

12. It is unclear why the Applicant waited nearly two months before informing the Respondents that the works had been carried out without fully complying with the statutory consultation requirements. Nevertheless, there was partial compliance with the regulations in that the Applicant sent out a Notice of Intention to leaseholders, and we accept on the basis of the evidence before us that the failure to complete the consultation process was triggered by the system failing, thereby making the works more urgent than they had initially appeared to be.
13. As is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key consideration when considering an application for dispensation is whether the leaseholders have suffered any real prejudice as a result of the failure to comply with the consultation requirements.
14. In this case, there is reasonable evidence to indicate that the works were urgent, in that there was suddenly no hot water supply, and the Applicant’s submissions on this point have not been contradicted by any of the Respondents. The Respondents had not responded to the Notice of Intention, which arguably shows that they were either supportive of the Applicant’s approach or not engaged with the process. In addition, the contractor used was one with whom the Applicant had an existing qualifying long-term agreement on which it had fully consulted. Also, and importantly, whilst the Applicant has not fully

complied with the statutory consultation requirements, none of the leaseholders has objected to the application.

15. In addition, none of the Respondents has suggested that there has been any prejudice to leaseholders as a result of the failure to comply with the statutory consultation requirements.
16. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements, and on the facts of this case in the light of the points noted above we consider that it is reasonable to dispense with them.
17. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even where minded to grant dispensation it is open to a tribunal to do so subject to conditions, for example where it would be appropriate to impose a condition in order to compensate for any prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
18. Accordingly, we grant unconditional dispensation from compliance with those of the consultation requirements not complied with by the Applicant.
19. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works.

Costs

20. There have been no cost applications.

Name: Judge P Korn

Date: 29th April 2021

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.