



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

Case reference : **LON/00BG/LDC/2020/0230**

HMCTS Code : **P:Paper remote**

Property : **Globe House, 14-22 Cobb Street,
London
E1 7LB**

Applicant : **Abacus Land 4 Limited**

Representative : **D & G Block Management Ltd – Ms
S Martin**

Respondents : **The leaseholders listed in the
application**

Representative : **In person**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal member : **Tribunal Judge I Mohabir
Mrs J Mann MCIEH**

Date of determination : **22 March 2021**

Date of decision : **22 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. Globe House, 14-22 Cobb Street, London, E1 7LB (“the property”) is comprised of 9 residential leasehold flats with retail commercial premises on the ground floor.
3. On the 6 March 2020 the Applicant’s managing agent, D & G Block Management Ltd (“D & G”) for property started to receive reports from leaseholders, residents and managing agents of various flats to say that there was a very strong smell and taste of sewage in the water supply coming from all taps within the individual properties at the building.
4. Following these reports Thames Water attended on 8 March 2020 to carry out testing and sampling of the water supply where heavy faecal contamination was found in the fresh water supply. An immediate restriction of use notice was then issued to all residents to advise that they must not use the water for, drinking, cleaning teeth, preparing or cooking food or for the provision of drinking water for pets.
5. Thames Water then returned on the 9 March to attempt to locate the source of the contamination however this was not possible as the fresh water is held in a subterranean water tank which was not accessible on the day.
6. Following this, a further appointment was arranged with D & G where Thames Water attended and carried out a review of their wastewater assets where no likely source of contamination was identified. It was, therefore, concluded that the source of the contamination was an internal wastewater plumbing issue which was contaminating the fresh water supply to the building.
7. Once the source was confirmed on the 10 March 2020, D & G immediately arranged a visit for Unbloc Drain Services to attend the building to locate and check the soil stack for any apparent leaks. The leak was not located, and it was advised that a CCTV Survey with a confined spaces crew and heavy lifting equipment was required to investigate further.

8. The CCTV survey took place on the 11 March 2020, where heavy ingress was found in the basement where the tank is located. However, no faults were found with any of the pipework surveyed, and no repairs were required to the pipework at this time.
9. D & G then spoke to Thompson Environmental Water Services who advised that the safest and only option, which would allow the water supply to be reinstated at the building, would be to carry out a permanent bypass of the tank and connect directly to the mains water supply coming into the building. These works took place on 20 March 2020. It was further advised that due to the nature of the contamination a clean and disinfection would also be required following the works and these works took place on 23 March 2020.
10. Thames Water then returned on the afternoon of the same day to take samples of the water supply from all of the properties, which after initial sampling was deemed safe on the 24 March 2020. Thames Water carried out further testing on the same day, which also came back as safe on the 25 March. Final key results were received on the 27 March, which also came back with all results negative of any faecal indicator bacteria at which point a clearance notice was issued to all residents to advise the water was safe to drink again.
11. Subsequently, the Applicant made this application seeking retrospective dispensation from the requirement to carry statutory consultation in relation to these works.
12. On 20 January 2021, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.
13. None of the Respondents have objected to the application.

Relevant Law

14. This is set out in the Appendix annexed hereto.

Decision

15. The determination of the application took place on 22 March 2021 without an oral hearing. It was based solely on the statements of case and other documentary evidence filed by the Applicant.
16. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

17. The issue before the Tribunal was whether dispensation, retrospectively or otherwise, should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the drinking water supply plumbing works. As stated earlier, the Tribunal is not concerned about the actual cost that has been incurred.
18. The Tribunal granted the application the following reasons:
 - (a) the Tribunal was satisfied that the water contamination posed a significant health and safety hazard to the occupiers and were, therefore urgent in nature. This was confirmed in the inspection by Thames Water.
 - (b) the Tribunal was satisfied that the Respondents were kept informed by D & G of the need and progress of the urgent works.
 - (c) the Tribunal was also satisfied given the urgent nature of the works, the Applicant could not carry out any consultation with the leaseholders and that it had acted appropriately in the circumstances.
 - (d) the Tribunal was also satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
 - (e) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred and they have done so by making the parallel service charge application under section 27A of the Act. it is in that application the arguments in relation to historic neglect may be pursued by the Respondents.
19. The Tribunal, therefore, concluded that the Respondents were not prejudiced by the Applicant's failure to consult and the application was granted as sought.
20. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I
Mohabir

Date: 22 March 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.