



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

Case reference : **LON/00BJ/LDC/2021/0115P**

Property : **Lumiere Apartments, 58 St John's Hill, London SW11 1AD**

Applicant : **Lumiere Freehold Ltd**

Representative : **Amanda Hardy, Company Secretary**

Respondents : **The leaseholders of the Property as listed in the application**

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

Tribunal members : **Judge P Korn
Mr A Fonka**

Date of decision : **5th July 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 the consultation requirements 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 carrying out of a drone survey to identify the precise remedial works that need to be carried out, following the identification of significant defects by an earlier compartmentation survey. As at the date of the application, the works had not yet been carried out.
3. The Property is a mixed-use Grade II listed building consisting of a 1920s converted cinema (now let to a church, with a sublet to a small gym) and 61 purpose-built apartments. The Respondents are the long leaseholders of the apartments.

Applicant’s case

4. A compartmentation survey was carried out on the building in October 2020. That survey highlighted a number of issues with the lack of compartmentation in the communal areas of the building and in the basement and between flats. There had also been numerous roof leaks from the flat roofs which had caused water ingress into a number of flats and into the basement and the area being used as a church.
5. Because no ‘as built’ drawings were available for the building, the Applicant was advised to undertake an infra-red drone survey in order to obtain details of all defects in the building.
6. The Applicant seeks dispensation from compliance with the consultation requirements as it states that there are serious issues within the building, including a lack of compartmentation between flats and communal hallways, significant leak issues and defects in the roof.
7. The Applicant has obtained a quote from a professional drone company for carrying out the infra-red drone survey.

Responses from the Respondents

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

The relevant legal provisions

9. 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”*.
10. 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

11. We note that the Applicant has not complied with any of the statutory consultation requirements. However, 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.
12. There is evidence to indicate that the drone survey is urgent. Although it is arguable that the Applicant could have articulated the degree of urgency more clearly, we note that there are concerns about the lack of compartmentation between flats and communal hallways, significant leak issues and defects in the roof. In addition, it is implicit from the application that the lack of ‘as built’ drawings is hampering the Applicant’s ability to have an understanding as to the full extent of the problems, and on that basis we accept that the carrying out of the drone survey does appear to be urgent. The Applicant’s submissions have not been contradicted by any of the Respondents and, importantly, none of the Respondents has objected to this application.
13. In addition, none of the Respondents has suggested that there has been any prejudice to leaseholders as a result of the failure fully to comply with the statutory consultation requirements.
14. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. Whilst the Applicant has not made clear why it felt unable even to **start** complying with the statutory consultation process, nevertheless on the facts of this case in

the light of the points noted above we consider that it is reasonable to dispense with the consultation requirements.

15. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even when 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.
16. Accordingly, we grant unconditional dispensation from compliance with the consultation requirements.
17. 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

18. There have been no cost applications.

Name: Judge P Korn

Date: 5th July 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.