



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

**Case reference** : **LON/00BK/LDC/2021/0158**  
**P:Paperremote**

**Property** : **30-31 Devonshire Place London W1G  
6JJ**

**Applicant** : **Howard De Walden Estates Limited**

**Representative** : **Charles Russell Speechley LLP**

**Respondent leaseholders** : **The Leaseholders listed on the  
application**

**Type of application** : **To dispense with the consultation  
requirements under S.20 Landlord  
and Tenant Act 1985**

**Tribunal member(s)** : **Mrs E Flint FRICS**  
**Mr S Wheeler MCIEH, CEnvH**

**Date and venue of  
determination** : **Remote on the papers**

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**DECISION**

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This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondent. A face to face hearing was not held because it was not practicable, no-one requested the same, and all the issues could be determined on the papers.

### **Decision of the tribunal**

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to the plumbing, gas and electrical works in the vaults of the building.
- (2) The question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

### **The Background**

1. The application under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) was made by the applicants on 17<sup>th</sup> June 2021.
2. The application concerned the replacement of corroded pipes and cables and associated works in the vaults of the building. The works took place between 12 April and 28 May 2021.
3. Directions were issued on 29 June 2021 requiring the applicant to prepare bundles by 27 August 2021 to include statements
  - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies and copies of any replies from the tenants;
  - (ii) The Leaseholders were asked to confirm by 6 August 2021 whether or not they would give their consent to the application.
  - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon.
4. Objections to the application were received from the five leaseholders of Flats B, C and J.
5. The Leaseholders were informed in the Directions issued by the Tribunal that the question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

### **The Evidence**

6. 30-31 Devonshire Place is a town house on the lower ground, ground and four upper floors which has been converted into flats. The service

pipes and cables serving the flats are situated in the vaults of the building.

7. The freeholders were carrying out refurbishment works to Flat A on the lower ground floor of the building. While clearing out the vaults the contractors became aware of a strong smell of gas emanating from the gas pipe serving Flat B which is also on the lower ground floor. During the preparatory works it became obvious that not only were the gas pipes corroded but also the water pipes and the electrical mains cables were running among the pipework.
8. The applicants stated that the works were urgent. The works included the replacement of the corroded pipework, insulation of the pipework where appropriate, break out works, temporary supply of water and gas, reinstatement works and supply of heaters when no gas was available. The applicants explained that unprotected copper water pipes had been laid over unprotected copper gas pipes, historic leaks and a reaction with the concrete had exacerbated their decay. Their written representations were supported by a number of colour photographs illustrating the conditions within the vaults.
9. The five lessees objecting to the application made a joint submission in which they stated that as the works were originally described by a property manager as “essential maintenance works” they could not have been emergency works. The respondents further suggested that as three months had elapsed since the need for the works became apparent that S20 consultation could have been undertaken prior to the application for dispensation being made on 17 June 2021. Other grounds related to the reasonableness of the works and associated costs.
10. It was agreed that no consultation has been carried out in respect of the works.

### **The Decision**

11. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
12. The Tribunal determines that it was unrealistic for the applicant to consult on the works when repair of the gas leak was clearly urgent and

the extent of the work necessary only became obvious as the opening up of the area was completed.

13. Those sections of the respondent's submissions relating to the reasonableness and cost of the works and fees are not within the scope of this application.
14. The Tribunal determines from the evidence before it that no prejudice to the lessees has been demonstrated.
15. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted.

**Name:** Evelyn Flint

**Date:** 6 September 2021

#### **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.