



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

Case reference : **LON/00AY/LDC/2021/0263**

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

Representative : **Harsha Kara, Litigation Officer of
the Applicant**
**Mr Joseph Tai Fisher and Mr Jacob
Maro Fisher (1)**
Dr Justice Smart (2)
Ms Jacqueline Bailey (3)
**Ms Lorena Jeanneth Bustillos-
Perez (4)**

**Tenants/
Respondents** : **Mr Samuel Ikechukwu Onyeka
Yzonwa (5)**
**Ms Olasunkanmi F Lawal-Ahmed
(6)**
Mr Samuel Tesfayohannes (7)
Ms Tania Siu-Lin Rogai (8)
Mr Abdul Karim Conteh (9)

Property : **16-45 Newbury House, Overton
Road, London, SW9 7HJ**

Tribunal : **Mr Charles Norman FRICS**

Date of Decision : **14 January 2022**

DECISION

Covid-19 pandemic: description of determination

This has been a remote determination. The form of remote determination was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all matters could be determined on the papers. The documents that the Tribunal were referred to are in a bundle of 61 pages, the contents of which the Tribunal has noted.

Decision

1. Dispensation in respect of consultation requirements in respect of replacing a leaking communal cold water tank and associated works set out in a Lambeth Justification Report dated 29.10.2020 is **GRANTED** unconditionally.

Reasons

Background to the application

2. The landlord/applicant has applied for dispensation from the statutory consultation requirements in respect of replacement works for a communal cold water tank at the property comprising the following:
 - Clearing tank room of redundant sectional GRP tanks to make room to work.
 - Installing a new tank base constructed of steels & 1” marine plywood, and a polypropylene drip tray.
 - Installing a new pre-insulated sectional GRP tank (3 x 1 x 1.5m) with raised ball valve chamber, and Aylesbury float valve.
 - Plumbing tank, disinfect, and open to service.
 - Isolate, drain, cut out, and remove, the existing operational sectional GPR tanks.
 - Installing a second new tank base constructed of steels & 1” marine plywood, and a polypropylene drip tray.
 - Installing a second new pre-insulated sectional GRP tank (3 x 1 x 1.5m) with raised ball valve chamber and Aylesbury float valve.
 - Plumbing tank, disinfect, and open to service.
 - The installations to include new isolation valves, pipework insulation, and be in compliance with current water regulations.
 - Supplying certificate of disinfection and works report
3. The estimated cost was £20,972.40.
4. The works have been completed.
5. Directions were issued on 11 November 2021, amended on 26 November 2021 to remove the requirement to display a copy of the application/ directions in common parts, owing to Covid.
6. On 4 November 2021, the Applicants sent an informal letter to the respondents setting out the position with an individualised cost estimate.

7. On 24 November 2021, the Council served all respondents with the requisite documents as required by the directions.

The Applicants' Case

8. The applicant sought retrospective dispensation from Schedule 3 of the Service Charges (Consultation Requirement)(England) Regulations 2003. The subject property is a mixed tenure purpose built block of 30 flats of which 9 are respondents. There is qualifying long-term agreement in place. On 19 October 2020, the applicant was made aware of severe leakage of a communal cold water tank. T Brown, contractor, investigated and established low pressure cause by a burst. If left, this would have adversely affected other linked systems and increased costs. The Applicants are responsible for this maintenance under the leases. The Applicant acted swiftly to maintain a water supply to the residents. There was no prejudice to the Respondents. A sample lease was supplied.

The Respondents' case

9. None of the Respondents responded to the application.

The Law

10. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

11. The Tribunal finds that the applicant has acted reasonably in dealing with this urgent disrepair and it notes that that none of the tenants have objected to the application. The works were fully described in the Lambeth Justification Report dated 29.10.2020 and colour photographs appended clearly showing severe water leakage. Therefore, the appropriate outcome under section 20ZA is that dispensation is granted unconditionally in respect of the consultation requirements for these works.

- 12. However, this decision has no bearing on the question of the reasonableness of costs to be incurred or their payability. The Tribunal makes no findings in relation to those matters.**

C Norman FRICS
Valuer Chairman

14 January 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(1)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 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,
and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

- (a)if it is an agreement of a description prescribed by the regulations, or
- (b)in any circumstances so prescribed.

(4)In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

- (a)to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
- (b)to obtain estimates for proposed works or agreements,
- (c)to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
- (d)to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
- (e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

- (a)may make provision generally or only in relation to specific cases, and
- (b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.