



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

**Case reference** : **LON/00AY/LDC/2022/0181**

**HMCTS code (paper, video, audio)** : **P: PAPER REMOTE**

**Property** : **1-24 Ecclestone House, Tulse Hill, London SW2 2HP**

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

**Representative** : **Patrick Byfield, Litigation Officer**

**Respondents** : **The lessees listed in the schedule to the application**

**Type of application** : **To dispense with the requirement to consult leaseholders**

**Tribunal Members** : **Judge N Hawkes  
Ms M Krisko FRICS**

**London Panel** : **10 Alfred Place, London WC1E 7LR**

**Date of paper determination** : **30 November 2022**

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**DECISION**

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## **PAPER DETERMINATION**

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 62 pages (including index). The order made is described below.

### **Decision of the Tribunal**

The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 24 August 2022.

### **Background**

1. The Applicant has applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to 1-24 Ecclestone House, Tulse Hill, London SW2 2HP ("the Property").
2. The Applicant's submissions in support of the application include the following matters:

*"4. The Council is the freeholder of 1-24, ECCLESTONE HOUSE, TULSE HILL, LONDON, SW2 2HP (the Building). The Building is a purpose built block consisting of 24 mixed tenure flats. The Respondents will ultimately be liable for a proportion of the rechargeable block cost, recoverable as service charge under their respective leases.*

*5. The Council is seeking retrospective dispensation from Schedule 3 of The Service Charges (Consultation Requirements) (England) 2003 regulations ("the 2003 Regulations"), which amongst other things, requires the landlord to give leaseholders 30 days in which to provide observations before starting works.*

*6. The Council was notified of an urgent matter on 14 January 2022. Thames Water (Hydrocura) identified an underground leak to the mains water supply externally to Ecclestone House, which was losing in excess of 30,000 litres of water a day. See Thames Water report marked "PB1".*

*7. The Council's qualifying long-term contractor, OCO Limited ("the Contractor"), was instructed who quoted £28,376.25 + VAT for the following remedial works ("PB2"):  
Major leak on supply under block requires relay*

- Trace all services and chalk mark, trace all mains and supply runs - £117.50
- Set up site safety barrier system - £117.50
- Set up traffic management as working in road - £587.50
- Excavate at newly installed valve to supply feeding block - £705.00
- Excavate trench approximately 13m through reinforced concrete into bin shed - £3995.00
- 7 x diamond drilling's through floors and into bin store - £4112.50
- All machinery, access platforms and pipe to install 2" barrel internally from bin store to tank room approximately 25meters all clipped and supported - £6815.00
- Lay on new supply in MDPE into bin store - £705.00
- Install new 2" valve double check valve and drain cock - £1410.00
- Carry out all necessary connections - £940.00
- Asbestos checks on flooring, intrusive checks to areas where drilling to be carried out OCO to have structural checks for drillings Insulate all pipe where required - £1057.50
- Carry out boxing in after works - £2702.50
- All locally chlorinated and visually tested - £176.25
- All backfilled and permanently reinstated - £4112.50
- Remove all surplus materials and leave clean and tidy £822.50

8. A Justification Report dated 25 January 2022 was produced, explaining that a temporary fix to allow for full consultation to be carried out is not practicable and will result in up to 1.2 million litres of water going to waste. Further, if the problem got any worse, it could possibly mean that the residents will be without a water supply ("PB3").

9. The work order was approved on 25 Jan 2022 and the works were reported completed on or before 22 February 2022.

10. These works were carried out by the Contractor under a qualifying long-term agreement. These are qualifying works, and the 2003 Regulations apply. Due to the urgent nature of needing to repair a leak of over 30,000 litres of water going to waste every day, we were unable to comply with the requirement of allowing 30 days for Leaseholders to make observations.

11. However, to ensure that the Leaseholders are aware of the cost of the total works, and in the spirit of the regulations, the Council has written to all Leaseholders on 27 January 2022 explaining why these works are required, what their estimated contribution is expected to be and that the Council will be applying to the First-tier Tribunal for retrospective dispensation from the requirements to consult. The Council has also provided them with a FAQ sheet which addresses some of the questions they may have. A sample copy of this letter is marked "PB4".

3. The application is dated 24 August 2022 and the Respondent lessees are listed in a schedule to the application.

4. Directions of the Tribunal were issued on 7 October 2022.
5. The Directions included provision that this application would be determined on the papers unless an oral hearing was requested. No application has been made by any party for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 30 November 2022.
6. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute. Photographs and a plan were provided in the determination bundle.

### **The Respondents' case**

7. None of the Respondents have submitted a reply form to the Tribunal and/or have made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements.

### **The Tribunal's determination**

8. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.
9. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
10. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
11. Section 20ZA of the 1985 Act provides that, where an application is made to the 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. In determining this application, the Tribunal has considered *Daejan Investments Ltd v Benson* [2013] UKSC 54, [2013] 1 WLR 854.
12. In all the circumstances and having considered:
  - a. the Applicant's application;

- b. the evidence and submissions filed in support of the application; and
- c. the fact that none of the Respondents has submitted a reply form to the Tribunal and/or has made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements;

the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 24 August 2022. The Tribunal is satisfied on the balance of probabilities that, due to the urgent need to remedy the defect causing a major water leak and the risk that residents would be without a water supply, it was not practicable to comply with the statutory consultation requirements in this instance.

**13. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge N Hawkes

Date: 30 November 2022

**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).