



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

**Case Reference** : **LON/00BK/LDC/2022/0232**

**Property** : **The Water Gardens, Burwood  
Place, London, W2 2BD**

**Applicant** : **Church Commissioners for  
England**

**Representative** : **Savills**

**Respondents** : **The leaseholders of the residential  
flats listed in the application**

**Representative** : **In person**

**Type of Application** : **For dispensation from the  
consultation requirements under  
section 20ZA Landlord & Tenant  
Act 1985**

**Tribunal** : **Mr R Waterhouse BSc (Hons) LLM  
Property Law MA FRICS**

**Date of Decision** : **7<sup>th</sup> March 2023**

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**DECISION**

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This has been a remote paper determination, which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents the Tribunal were referred to were in a bundle of some 275 pages.

### **Decision**

- (1) The tribunal determines that unconditional dispensation should be granted from the consultation requirements from section 20ZA of the Landlord and Tenant Act 1985 (the Act) in respect of the property The Water Gardens, Burwood Place, London, W2 2BD.**
- (2) We make no determination as to the reasonableness of the costs of same, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.**

### **The application**

1. This Application is made by Church Commissioners for England C/O Savills.
2. The Application seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985.
3. The Application is concerned solely with the question of what consultation if any should be given of the consultation requirements of section 20 of the 1985 for works costing in excess of £250 per flat. It is not concerned with the reasonableness or payability of any service charges which may arise.
4. The applicant landlord has applied for dispensation from the statutory consultation requirements in respect of proposed electrical infrastructure works which included UK Power Network stripping out the original cast iron service heads. The estimated cost of the works was originally quoted at £110,000 + VAT based on experience of similar projects. However, when UKPN assessed the scale and extend of the works, they provided a quote of £176,903.28 + VAT – totalling £212,283.94.
5. Section 20 Part I notices were issued to all leaseholders on 14 August 2017, Section 20 Part 2 notices were issued on 14 October 2020 and Section 20 Part 3 noticed were issued on 2 February 2021.

## **The hearing**

6. A written Application was made by Savills who have been appointed by The Church Commissioners for England, to make this application. The case was decided on paper and no appearances were made. The tribunal considered the written bundle of 275 pages, in support of the Application.

## **Background**

7. The Water Gardens is a purpose-built development of 250 flats, consisting of four separate entrance blocks.
8. The Applicant in this case is recorded in box 1 of the application form as the asset manager. The Church Commissioners for England own the block freehold subject to long leases.
9. The Application notes, "Leaseholders were consulted on the basis that the cost of the UKPN works would be £110,000 plus VAT. However, the final costs were £176,903.28 plus VAT. It was agreed that the Church Commissioners would instruct UKPN directly to avoid the contractors mark up of 15% and save costs for the leaseholders."
10. "The applicant was unable to comply with the formal consultation process under section 20 Landlord and Tenant Act 1985. To protect the stability and structure of the Building, prevent any further substantial damage from occurring and ensure no serious harm came to the Respondents and occupiers for each stage of the consultation procedure as prescribed by the Service Charges (Consultation Requirements) (England) (Regulations) 2003 would have resulted in an unacceptable delay to the works being carried out to the detriment of the Respondents."
11. The Directions dated 11<sup>th</sup> January 2023 provided for the tenants to be given copies of the Application form, a brief statement to explain the reasons for the Application and display a copy of the directions in a prominent place in the common parts of the property, by 25<sup>th</sup> January 2023. Additionally sending an e mail to the tribunal by 30 January 2023 confirming and stating when done.
11. The Directions also note that any leaseholder who opposes the Application should by the 8<sup>th</sup> February 2023 complete the reply form and return it to the tribunal.

12. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

## **Documents**

### **Applicants**

13. The Bundle contained The Statement of Case of the Applicant. This noted at 2.13 that the Church Commissioners believe it was necessary to instruct UKPN directly in order to

Avoid the contractors mark up of 15% and save costs for leaseholders

Ensure no further delay in the project

Carry out the obligations set out in the lease to maintain the building

The bundle also contains a specimen lease.

Additionally, a separate e mail dated 30 Th January 2023 from Josef Fischbacher of Savills confirms a copy of the application form, directors and statement of account was sent to all leaseholders that they had an email address for including the Residents Association. Those not e mailed were contacted on 30<sup>th</sup> January 2023 by post.

### **Respondents**

14. The tribunal is not in receipt of any Reply Forms of other communication from any leaseholders nor the Residents Association.

### **The tribunal's decision**

15. Accordingly, we find that unconditional dispensation should be granted.
16. The tribunal grants dispensation under section 20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation) (England) 2003 for the works set out in the application.

17. We are, aware of the judgment in Daejan Investments Limited v Benson and others [2013] UKSC 14. The application for dispensation is not challenged.
18. The Supreme Court (Lord Neuberger at para 50) accepted that there must be real prejudice to the tenants. Indeed, the Respondents do not oppose the application. It is accepted that we have the power to grant dispensation on such terms as we think fit. However, the Landlord is entitled to decide the identity of the contractors who carry out the work, when they are done, by whom and the amount. The safety net for the Respondents is to be found in sections 19 and 27A of the Landlord and Tenant Act 1985.
19. Accordingly, we find that unconditional dispensation should be granted. In making our decision we have borne in mind the quotes which we were referred, which in our finding clearly indicate that works are required at the Property.
20. Our decision is in respect of the dispensation from the provisions of s20 of the Act only. Any concern that a Respondent, that has as to the standard of works, the need for them and costs will need to be considered separately, following an application to do so should one be made, and their position is not affected by our decision on this application.

*Richard Waterhouse*

<b>Name:</b>	<b>Richard Waterhouse LLM FRICS</b>	<b>7<sup>th</sup> March 2023.</b>
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#### **ANNEX – 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 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 to 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 (ie 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**