



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

Case reference : **LON/00AW/LDC/2021/0016P**

Property : **38/39 Evelyn Gardens, London
SW7 3BJ**

Applicant : **The Wellcome Trust Limited**

Representative : **Ruby Frampton of Savills (UK) Ltd**

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

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

Tribunal member : **Judge P Korn**

Date of decision : **7th June 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 I have been referred are in an electronic bundle, the contents of which I 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 those of the consultation requirements which have not already been complied with 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 erection and dismantling of a scaffolding tower, relining of sections of pipework, sealing off of a redundant pipe, replacing lead covering to a dormer, installing new cheeks to the dormer and carrying out connected works at a total cost of £6,043.20 inclusive of VAT. The purpose of the works was to address damp issues. It appears that the works have now been carried out in full and that therefore this is a request for retrospective dispensation.
3. The Property is a building constructed in the early 1900s converted into 8 flats. The Respondents are the long leaseholders of the flats.

Applicant’s case

4. Following reports of damp in Flats 1, 4 and 39, the contractor N-Compass London attended the Property in July 2020 to investigate the cause of the damp. N-Compass advised that scaffolding was required due to the high level of the damp in Flat 4. A notice of intention was issued to leaseholders on 29th August 2020 in respect of the scaffolding, but no other consultation was carried out due to the perceived urgency of the works.
5. Following the investigations, holes in the lead around the dormer were found to be the cause of the damp in Flat 4. N-Compass were then instructed to carry out the necessary works to resolve the issue on the basis of their quote.
6. In relation to the damp in Flats 1 and 39, the investigations revealed a separate problem in connection with the downpipes. A CCTV survey of the downpipes was carried out and it was found that there was a damaged section of pipework and an area that was redundant and required sealing off. N-Compass were then instructed to carry out the necessary work.

7. The Applicant's bundle of documents includes a copy of the notice of intention, copies of N-Compass's lead works quotation and scaffolding and downpipe invoices, and copy photographs showing the damp in each of the three affected flats.
8. The Applicant seeks dispensation from full compliance with the statutory consultation requirements on the ground that to have delayed the works in order to complete the consultation with leaseholders would have resulted in additional water damage being suffered by Flats 1, 4 and 39.

Responses from the Respondents

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

The relevant legal provisions

10. 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*".
11. 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

12. I note that the Applicant sent out notices of intention and that therefore this is not a case in which the landlord has made no attempt to consult with leaseholders. Nevertheless, the Applicant has not provided any real analysis as to the difference that would have been made by delaying the carrying out of the works until after a full consultation process had taken place.
13. 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.
14. In this case, there is evidence to indicate that the works were urgent, in the sense that water was continuing to penetrate the three flats in question. Even if this did not present an actual health and safety risk, it

is plausible that any further delay in addressing the problem would have led to worsening damage and therefore greater expense when fixing the problem and carrying out repairs. And whilst the Applicant has not provided any detailed analysis on this point, the Applicant's submissions have not been contradicted by or on behalf of any of the Respondents. Also, and importantly, whilst there has not been full compliance with the consultation requirements, none of the leaseholders has objected to this application.

15. 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.
16. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements, and on the facts of this case in the light of the points noted above I consider that it is reasonable to dispense with those of the consultation requirements which have not already been complied with.
17. 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.
18. Accordingly, I grant unconditional dispensation from compliance with those of the consultation requirements which have not already been complied with.
19. 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

20. There have been no cost applications.

Name: Judge P Korn

Date: 7th June 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.