



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

Case reference : **P/ LON/00AX/LDC/2020/0224**

Property : **Avante Court, The Bittoms, Kingston
Upon Thames, Surrey, KT1 2AN**

Applicant : **Avante Management Company
(Kingston) Limited**

Representative : **Ringley Law LLP**

Respondent : **The leaseholders of apartments 1-85 of
the property**

Representative : **Not applicable**

Type of application : **For dispensation from statutory
consultation**

**Tribunal
member(s)** : **Judge Dickie**

**Date of
determination** : **6 April 2021**

DECISION

Decisions of the tribunal

The tribunal grants the application for dispensation from statutory consultation in respect of the subject works: the extension of the fire alarm network and Automatic Opening Vent systems works.

The application

1. The premises are a purpose-built block of 85 flats. Application has been made by Avante Management Company (Kingston) Limited, the management company which is a party to the lease, for a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“The Act”) dispensing with statutory consultation in respect of major works.
2. The applicant has served a copy of the application and the tribunal's directions of 17 December 2020 on each of the leaseholders and arranged for their display in the common parts of the block. Those directions explained how any leaseholder might object to the application, and that they could request an oral hearing. No party has exercised their right to request an oral hearing of the application. The tribunal has therefore proceeded to reach a decision on the documents and without a hearing, having given notice of its intention to do so.
3. The applicant explains that extension of the fire alarm network and to the Automatic Opening Vent (AOV) system is required at the request of the London Fire Brigade.
4. This application is one of two applications made under s.20ZA of the Act for dispensation with statutory consultation requirements for fire safety works as required by the London Fire Brigade. The other application relates to compartmentalisation and fire stopping works, and has been assigned case reference LON/00AX/LDC/2021/0014. Directions were issued on that application on 1 March 2021. Those directions provided for the consolidation of the two applications and for them to be heard together, as confirmed to the applicant in a letter from the tribunal dated 26 March 2021. They have therefore been considered together, though a separate decision issued in respect of each application.
5. In the evidence produced by the applicant in support of application LON/00AX/LDC/2021/0014 is a letter dated 28 August 2020 from John Curtis MRICS of Ringley Building Engineering to Ringley Limited which refers to a meeting he had had on 24 August 2020 with Inspecting Officer John Simmons of London Fire Brigade, who had raised a number of concerns, the most significant of which were:

- (i) Any escape policy cannot be rationalised, without an upgraded alarm system, to warn the occupants in each unit in case of fire i.e. to facilitate an escape.
 - (ii) The existing fire doors require adjustment to ensure safe compartmentation between escape areas.
 - (iii) Existing vent shafts need to be automatically operational.
 - (iv) Areas where partition compartmentation has been compromised, by services and foam filler, need early attention to reinstate standard of fire separation between service risers etc. and common parts.
- 6. These concerns appear to form the basis for both applications to the tribunal. Mr Curtis said that he understood that since the joint inspection Mr Simmons' superiors at LFB were pushing for a waking watch, that action at this stage was limited to mitigation measures provided these are undertaken without unnecessary delay, and that Mr Curtis considered a Deficiency Notice was likely to be issued in the near future.
- 7. A notice dated 13 November 2020 of the intention to carry out the works has been served on the leaseholders pursuant to s.20 of the Act, and application has been made to the tribunal to dispense with the remainder of the statutory consultation procedure. The notice stated that the remedial works are required and deemed necessary by the landlord in light of the Fire Risk Assessment to ensure Avante Court is EWS1 compliant.
- 8. A notification of fire safety deficiencies was issued by the London Fire Brigade on 23 November 2020 and action recommended to be taken by 12 April 2021 to comply with Regulatory Reform (Fire Safety) Order 2005. These issues arose from inadequate fire resisting separation in the premises. A compartmentation and cladding survey highlighted deficiencies which would invalidate the defend in place policy for which the premises were designed.
- 9. The steps considered necessary were:
 - (i) Provide an appropriate means of fire detection and giving warning in the common parts of the premises. This can be achieved by installing as an interim measure until the cladding and compartmentation issues have been rectified a smoke detection system within escape routes.

- (ii) Ensure adequate emergency routes and exits. This can be achieved by rectifying the compartmentation issues within the risers.
 - (iii) Provide suitable fire resisting separation by sealing all holes/openings within the risers with suitable fire resistant materials.
- 10. The application stated that the works had not at that stage been started, but the applicant's bundle includes an invoice from Arc Fire Safety and Security dated 9 December 2020 in the sum of £11,121.60 including VAT for the AOV remedial works, and a commissioning certificate indicating that work was carried out on 8 December 2020. Also in the bundle is a quote from Arc dated 27 August 2020 for the fire alarm system expansion and additional protection in the sum of £52,350 excluding VAT plus £4,450 excluding VAT for the commissioning of the existing fire alarm equipment.
- 11. It is the landlord's case therefore that the work needs to be completed as soon as possible in order to as a result of the fire risk assessment and London Fire Brigade Assessment, and in light of the urgent health and safety risks. An inspection of the premises by the tribunal was not necessary.

Decision and Reasons

- 12. Section 20ZA(1) of the Act provides:

“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.”

- 13. The tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.
- 14. It appears that first stage consultation with the leaseholders was carried out. The tribunal has taken note of the fact that no leaseholder has taken the opportunity to object to the application.
- 15. There is therefore no evidence before the tribunal opposing the application which could suggest that the work was not necessary and/or ought to have been the subject of full statutory consultation.

16. No evidence has been put forward of prejudice to the tenants or other grounds on which the tribunal ought to consider refusing the application or granting it on terms.
17. The tribunal finds there is therefore sufficient uncontested evidence of the necessity to carry out the work urgently in the interests of the health and safety of the residents. In all the circumstances, and in light of the absence of objection, the tribunal considers it reasonable to grant the application for dispensation from statutory consultation in respect of the works. No conditions on the grant of dispensation are appropriate and none are made.
18. This decision does not affect the tribunal's jurisdiction upon an application to make a determination under section 27A of the Act in respect of the reasonable and payable cost of the work, should this be disputed by any leaseholder.

Name: Judge F Dickie

Date: 6 April 2021

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).