



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

Case reference : **LON/00BJ/LDC/2021/0165**

Property : **22 Hester Road, London SW11 4AN**

Applicant : **Foster Germany Ltd**

Representative : **D&G Block Management**

Respondents : **Leaseholders listed in the spreadsheet attached to the application**

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

Tribunal : **Judge Nicol**

Date of decision : **31st August 2021**

DECISION

The Tribunal grants the Applicant dispensation from the consultation requirements in relation to the electrical upgrade works to the property at 22 Hester Road, London SW11 4AN.

Reasons

1. This application for dispensation from statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 has been determined on the papers. A face to face hearing was not held because the Tribunal directed that the case was suitable for the paper track and the parties did not object. The documents that the Tribunal was referred to are in a bundle consisting of 206 pages, the contents of which have been recorded where appropriate below.
2. The Applicant is the freeholder of the subject property, a purpose-built block of 31 flats. Their agents are D&G Block Management. The Respondents are the lessees of the 31 flats.

3. By letter dated 7th April 2021, the Applicant informed each lessee that the gas boilers in each flat were failing and needed to be replaced. They had commissioned a report from Leonard Engineering Design Associates which reviewed the options:
 - (a) The existing gas boilers could not be replaced on a like-for-like basis because they were not condensing boilers, as required by current regulations, and non-condensing boilers were no longer available.
 - (b) However, condensing boilers were not an option because they could not use the existing communal flue and work to allow each flat to have a separate flue would be prohibitive.
 - (c) The gas boilers could be replaced by electric boilers if the capacity of the electrical system were upgraded.
4. The letter went on to say that the Applicant intended to proceed with the last option. They had obtained a quote dated 9th March 2021 from UK Power Networks for £20,295.45 plus VAT.
5. However, as the Applicant was aware, such works are subject to consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. The Applicant has applied to the Tribunal for dispensation from those requirements under section 20ZA of the Act on the basis that UKPN is the only possible contractor for these works so that alternative quotes could not be provided.
6. Under section 20ZA(1) of the Act, the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:
 - (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]
 - (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]
 - (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]
 - (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

- (e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]
 - (f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]
 - (g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]
 - (h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]
 - (i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]
 - (j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]
 - (k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]
7. The Tribunal is satisfied, on the evidence, that the electrical upgrade needs to be done in the light of the Applicant's reasonable conclusion that it is the best option in the circumstances but is puzzled by the suggestion that UKPN is the only possible contractor. While they are the monopoly provider of certain infrastructure for the supply of electricity, they themselves states in their quote, "there are other companies who can do some or all of the work for you; these are Independent Connection Providers."
8. However, none of the lessees have objected to the proposed works, either directly to the Applicant or their agents or to the Tribunal, let alone established any basis for thinking that they would be prejudiced by the lack of consultation.
9. The Tribunal's role at this stage is limited to determining only if the statutory consultation requirements may be dispensed with. As stated in the Tribunal's directions, "This application does not concern the issue of whether any service charge costs will be reasonable or payable."
10. Given the lack of any objection or any evidence of prejudice, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol

Date: 31st August 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).