



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

Case reference : **LON/00BG/LDC/2022/0018P**

Property : **Bow Connection, 75-89 Fairfield Road, London E3 2QF and E3 2QA**

Applicant : **Fairhold Holdings No.3 (Appts) Limited**

Representative : **Chris Peters of Inspired Property Management**

Respondents : **The leaseholders of the Property**

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

Tribunal members : **Judge P Korn
Mr S Mason FRICS**

Date of decision : **27 April 2022**

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 we have been referred are in an electronic bundle, the contents of which we 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 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 relate to the recovering of a terrace balcony area at the Property.
3. The Property is a purpose-built apartment block comprising 69 apartments, some with and some without terrace balconies.

Applicant’s case

4. The Applicant states that the reason why dispensation is being sought is that, although a full consultation on the proposed works was completed in mid-2021, as a result of a short-term funding gap the project is now to be split into two distinct phases. As a result, the project is not expected to be continuous and therefore not as originally consulted upon. The Applicant’s intention is to commence the works as soon as is financially and legally practicable so as to prevent any further damage to the building.
5. The Applicant submits that it would be damaging to the building to prevent works from commencing until a full new consultation has been carried out. There is also, it submits, a risk of increased costs of labour and materials due to pressures within the construction industry as advised to the Applicant by its appointed surveyor. The dispensation is therefore sought to allow a contract of works to be entered into before the end of the statutory period so as to reduce the risks of further

damage to the building and potential increased cost to the Respondents.

6. In the detailed statement of case, the Applicant's managing agents state that in the autumn/winter of 2020 it became apparent that increasingly worsening roof leaks from the terrace balcony areas on the fourth floor were occurring at the Property. Efforts to prevent water ingress were attempted by appointed contractors during the same period, but they were unable fully to succeed. A chartered surveying firm, Antony Patrick Associates ("APA") was then appointed by the Applicant to review the leaks and to produce a schedule of works for tender suitable to prevent further water ingress into the building.
7. The schedule of works proposed by APA was placed to tender initially in the summer of 2021 following the service of two Section 20 Notices of Intention. The reason for the second Notice was that it became apparent that more work would be necessary than was previously apparent. The anticipated cost of the proposed works, following the tender process, was shared with leaseholders in a Notice of Estimates.
8. It was considered to be a matter of urgency for the works to start as soon as practicable, and following discussions with the surveyor in early 2022, the Applicant felt that the only way legally to instruct the carrying out of the works without full funding for the continuous project was to instruct and undertake the works in two distinct phases. Given that phasing the work potentially altered the original scope of the proposed works as consulted on and also had the potential to alter the costs, a new Section 20 Notice of Intention was served on 2 February 2022. On the same day as the new Notice of Intention was served this application for dispensation from compliance with the remainder of the consultation requirements was made.
9. In response to the Notice of Intention served on 2 February 2022 nominations of contractors were received and observations were also received. All nominations were considered by APA prior to opening the tender process for the phased delivery of the works. Following a three-week tender period which was subsequently extended, the tender returns for the phased delivery of the proposed works were received by APA on 4 April 2022. Subject to the responses to tender queries to contractors issued on 8 April 2022 and the subsequent tender analysis, Inspired Property Management on behalf of the Applicant intend to serve Notices of Estimates on leaseholders.
10. The detailed reason for the dispensation application, as expressed in the statement of case, is to allow the Applicant, upon receipt of the tender analysis from APA and upon issuing Notices of Estimates, to immediately (or nearly immediately) instruct the contractor deemed most suitable for the works based on a combination of suitability, price and ability to start the proposed works without undue delay. The

Applicant submits that the utmost effort has been expended to comply with the spirit of the statutory consultation requirements and that no prejudice will be suffered by leaseholders through dispensing with the remainder of the consultation requirements.

Responses from the Respondents

11. The Applicant states that there have been no submissions from any of the Respondents objecting to the application.
12. The determination bundle contains a small amount of correspondence with leaseholders, including an exchange with a Mr Robert Bale who is (or, at least, was as at the date of his email) clearly unhappy with proposed increases to his service charge bill. However, neither Mr Bale nor any of the other Respondents has made any submissions to the tribunal objecting or commenting on this application for dispensation.

The relevant legal provisions

13. 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”*.
14. 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

15. We note that the stated Applicant is Fairhold Holdings No.3 (Appts) Limited but that the copy title register supplied by that company in response to the tribunal’s directions shows the owner of the Property to be Avonbraid Limited. Furthermore, a search at Companies House reveals Avonbraid Limited to be a dissolved company.
16. A closer examination of the copy title register shows it to be dated 17th November 2015, and therefore we strongly suspect that the version supplied is out of date. Taking into account the overriding objective of the tribunal rules contained in paragraph 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, we consider that it would be inappropriate and disproportionate either to dismiss this application or to hold up the making of a determination on this ground alone. Instead, we are content to make a determination on the assumption that Fairhold Holdings No.3 (Appts) Limited is in fact the current owner of the Property and the Respondents’ landlord.

However, the Applicant is directed to send to the tribunal an **up-to-date** copy of the title register by **4pm on Friday 6th May 2022**.

17. We note that the Applicant has made a significant effort to comply with the statutory consultation requirements and that the problems with achieving full compliance have arisen because of a change in circumstances. The change in circumstances has been explained in detail and the explanation is plausible. Whilst the reasons why it is not now possible and/or desirable to comply fully with the consultation requirements could perhaps have been expressed more clearly in the statement of case, ultimately as we understand it from the application form the reasons are essentially to reduce the risk of further damage to the building and to avoid potential increased costs being passed to the Respondents.
18. We also note the copy documentation supplied by the Applicant, including the consultation documentation, the tender analysis and the images of example damage.
19. As is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key issue 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.
20. In this case, none of the Respondents has expressed any objections in relation to the failure to go through the statutory consultation process, and there is no evidence before us that the leaseholders were in practice prejudiced by the failure to consult. Furthermore, on the basis of the information before us, it is plausible for the Applicant's managing agents to have concluded that a delay to the works would lead to a risk of further damage and/or greater expense being incurred.
21. 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 we consider that it is reasonable to dispense with the consultation requirements.
22. 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.
23. Accordingly, we grant unconditional dispensation from compliance with those of the consultation requirements which have not been complied with.

24. However, it should be noted that 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

25. There have been no cost applications.

Name: Judge P Korn

Date: 27 April 2022

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.