



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

<b>Case reference</b>	:	<b>CAM/26UK/LDC/2018/0020</b>
<b>Property</b>	:	<b>Flats 1-12 The Lodge, Orphanage Rd, Watford WD24 4QZ</b>
<b>Applicant</b>	:	<b>D B Rees(Builders)Ltd</b>
<b>Respondent</b>	:	<b>the long leaseholders listed in the application</b>
<b>Date of Application</b>	:	<b>16 November 2018</b>
<b>Type of Application</b>	:	<b>for permission to dispense with consultation requirements in respect of qualifying works - Section 20ZA Landlord and Tenant Act 1985, as amended (“the Act”)</b>
<b>Tribunal</b>	:	<b>Mr D S Brown (Chair) Judge J Morris</b>
<b>Date of Decision</b>	:	<b>17<sup>th</sup> December 2018</b>

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## **DECISION**

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**The Applicant is granted dispensation from the consultation requirements in relation to the removal of the diseased beech tree within the grounds of the property and adjacent to the BT depot.**

### **Statement of Reasons**

1. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’, which comprise removal of a diseased beech tree in the grounds of the property.
2. A procedural chair issued a directions order timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers taking into account any written representations made by the parties and a decision would not be made before 7<sup>th</sup> December 2018. It was made clear that if any party requested an oral hearing one would be arranged. No such request has been received.
3. The Applicant states that a routine tree report was undertaken by Peter Charlton of PC Landscapes on 23<sup>rd</sup> October . He alerted the applicant

that the base of one of the beech trees was showing signs of disease and should be removed “asap”. The beech tree is subject to a Tree Preservation Order (TPO). The tree officer from Watford Borough Council has now confirmed directly with PC Landscapes that due to the condition of the tree it could be removed without submitting a formal planning application. Removal will require hire of a crane due to the proximity of the tree to the security fence of the adjacent BT depot.

4. The quotation supplied for the crane hire is a minimum of £2200 (including vat) assuming 8 hours hire. There will be further costs for the removal of the tree but these are not yet known and therefore have not been supplied by the applicant.
5. On 23 November 2018, the Applicant wrote to the Respondents notifying them of the proposed works and informing them of its intention to apply for dispensation under section 20ZA.
6. The Respondents were directed to make any representations about the application by 30<sup>th</sup> November, indicating whether they considered that they would be prejudiced by dispensation being granted. No such representations have been received.

#### **The Law**

7. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 3 to the **Service Charges (Consultation Requirements) (England) Regulations 2003** (“the Regulations”). These require a fairly complicated and time consuming consultation process which give the lessees an opportunity to be told exactly what is going on and the landlord must give its response to those observations and take them into account.
8. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable to do so.

#### **Conclusions**

9. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this sort of case which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
10. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may be suffered by the lessees as a result of the lack of consultation.

11. The Tribunal grants dispensation on the grounds that no prejudice is likely to have been suffered by the Respondents as a result of proceeding with the relevant works without prior consultation under section 20 and the works need to be carried out without delay.
12. However, the Tribunal makes it clear that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. Nevertheless, if any tenant then wants to challenge the cost of this work, he or she will have to provide some clear evidence that the work could have been done more cheaply on reasonable enquiry within the time frame open to the Applicant.

**D S Brown FRICS (Chair)**

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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 Tribunal 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 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.
4. 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.