



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

Case reference : **LON/00AW/LDC/2021/0028P**

Property : **St Georges Court, 258 Brompton Road, London SW3 2AS**

Applicant : **Wellcome Trust Limited**

Representative : **Luke O’Connell 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 the consultation requirements 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 works to the water system to eradicate the presence of legionella bacteria in the water supply at a cost of £23,461.20 inclusive of VAT. 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 43 flats. The Respondents are the long leaseholders of the flats.

Applicant’s case

4. During routine monitoring, Hydrocert Ltd – the water hygiene maintenance provider for the Property – detected the presence of legionella in the water system at the Property. Hydrocert recommended further sampling and a full system disinfection to try to eradicate the bacteria from the system. The success of this approach was only partial due to limited occupancy in the building causing decreased turnover of water and also due to restricted access for further sampling.
5. Other recommendations were made, such as the fitting of flexi hoses and filters, both of which were arranged, but the managing agents could only provide these to communal outlets and not within each individual demise.
6. Upon further review, William Martin Compliance – health and safety consultants – advised that the most suitable course of action to control the issue and eradicate the bacteria from the system was to instal a chemical dosing system. WCS Group, a supplier recommended by William Martin Compliance, then provided a proposal and a quotation for the installation of a chemical dosing system known as a secondary biocide system. They also advised that there was a significant lead time and therefore that an order would need to be placed in good time.

7. The Applicant's bundle of documents includes a copy of the proposal and quotation from WCS Group and a copy of an email to leaseholders relating to the initial attempt to disinfect the water supply.
8. The Applicant seeks dispensation from compliance with the statutory consultation requirements on the ground that to have delayed the works in order to consult with leaseholders would have resulted in the prolonged presence of legionella in the water system.

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. There is no evidence before me that the Applicant has been through any consultation process with leaseholders, whether formally or informally.
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 delay would have led to prolonged exposure to legionella via the water system for residents and others. The Applicant has not provided any detailed analysis of the risks of delaying the works in order either fully or partially to consult with leaseholders, but the Applicant's submissions on this point have not been contradicted by or on behalf of any of the Respondents. Also, and importantly, whilst there has been no 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 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 them.
17. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even where 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 the consultation requirements.
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.