



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

Case reference : **LON/00BC/LDC/2022/0089P**

Property : **Embassy Court, 45 Wellington Road, London NW8 9SX**

Applicant : **Wellington Road Properties Limited**

Representative : **Mary Rose McMahon of James Andrew Residential**

Respondents : **The leaseholders of the Property**

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

Tribunal members : **Judge P Korn
Mrs J Mann MCIEH**

Date of decision : **18 July 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 the consultation requirements in respect of the qualifying works which are the subject of this application insofar as they have not already been complied with.

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, insofar as they have not already been complied with.
2. The qualifying works which are the subject of this application are various repairs to the plant which provides heating and cooling.
3. The Property comprises a block of 25 private residential apartments.

Applicant’s case

4. The Applicant’s managing agents state that a specialist contractor has been appointed on a yearly basis to maintain the plant which provides heating and cooling to the building. The nominated contractors undertake a 6 monthly planned preventative maintenance visit and have carried out various repairs over the years.
5. During the visit in May 2021 the contractors discovered that a number of major repairs to the system would be needed. A section 20 notice of intention was sent to leaseholders, but the contractors then concluded that a full scope of works could not be compiled until a full review of the system had been completed. Some pipework and valves were found to be leaking and certain control valves were not holding. Replacement of the valves had been the subject of a previous dispensation application (Ref: LON/00BK/LDC/2022/0026). Further pressure testing and identification of leaks in the distribution pipework after the valves were replaced led to a recommendation that the above ground pipework be removed and that blanking plates be installed directly to the ground loops to enable each ground loop to be individually pressure tested.
6. On 4 February 2022 a revised first section 20 notice was served on leaseholders outlining an intention to replace various control valves. Then on 8 April 2022 a further first section 20 notice was served on leaseholders relating to the proposed replacement of a twin pump-set. Then on 4 May 2022 further first section 20 notices were served on leaseholders relating to the repair/replacement of the building management system and to the carrying out of a pressure test to the ground loops. The Applicant’s mechanical & electrical consultants and

contractor then jointly advised that the Applicant should proceed with the emergency repairs which are the subject of this application – without completing the section 20 consultation process – whilst the full scope of works was being prepared for tendering purposes.

7. Based on the professional advice obtained, the Applicant is concerned that if the recommended emergency repairs are delayed the system could cease to be operational and this could cause damage to equipment that is dependent on cooling and could discharge fluid into the ground. In addition, the Applicant understands that the full maintenance of the whole system cannot properly be progressed without first going through this initial stage which includes further testing.
8. The hearing bundle includes technical reports, quotes, invoices and correspondence with leaseholders.

Responses from the Respondents

9. The hearing bundles contain no submissions from the Respondents objecting to the application, and we take this as confirmation from the Applicant and its managing agents that there have been no objections to the dispensation 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. We note that the Applicant has partially complied with the consultation requirements and that the failure to comply fully is due to the Applicant having been advised jointly by its consultants and its contractor that the initial works of repair and further testing are too urgent to justify waiting for completion of the statutory consultation process.
13. 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 prejudice as a result of the failure to comply with the consultation requirements.

14. In this case, none of the Respondents has expressed any objections in relation to the failure to go through the full statutory consultation process, and there is no evidence before us that the leaseholders were in practice prejudiced by the failure to consult fully. Furthermore, the uncontested evidence before us is that the works which are the subject of this application are emergency works.
15. 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.
16. 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 specific prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
17. Accordingly, we grant unconditional dispensation from compliance with the consultation requirements.
18. **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

19. There have been no cost applications.

Name: Judge P Korn

Date: 18 July 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.