



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

Case reference : **LON/00BB/LDC/2019/0129**

Property : **1-39 Callisto Court, 108
Hammersley Road, London E16
1FW**

Applicant : **London Borough of Newham**

Representative : **George Davis – Managing Agent**

Respondents : **Various leaseholders of Callisto
Court, London E16 1FW**

Type of application : **An application for dispensation
from the consultation
requirements of s.20 Landlord and
Tenant Act 1985**

Tribunal member : **(1) Tribunal Judge Brandler
(2) Mr Hugh Geddes, Professional
Member**

**Date and venue of
hearing** : **N/A**

Date of decision : **23 September 2019**

DECISION

Decision

1. The Tribunal grants the applicant dispensation from the statutory consultation requirements in respect of works required to be carried out to 1-39 Callisto Court, 108 Hammersley Road, London E16 1FW ("The building").

Background

2. The Freeholder is LB Newham.
3. The leaseholder is Calisto
4. The managing agents are Chamonix Estates,
5. Although it is suggested that there are various leaseholders of flats 1-39, no evidence of those leases has been produced other than a list of names with flat numbers.
6. On 13 August 2019 the managing agents submitted an application for dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord & Tenant Act 1985 for emergency works to be carried out. The evidence suggests that as a result of 6 large scale leaks with overall claims in excess of £200,000, insurance companies are refusing to cover the block for further escape of water. Recent tests have highlighted concerns about the existing pipework and it is essential that new pipework is installed urgently to remedy the issues.
7. On 21 August 2019 the tribunal issued directions. These included a direction to the applicant to send to each leaseholder a copy of the application with any accompanying documents, the directions and the tribunal's covering letter. The applicant was also instructed to place a copy of these documents in the hall/notice board at the block and should have confirmed to the Tribunal by 29 August 2019 that these directions had been complied with.
8. On 28 August 2019, the applicant confirmed by email that the documents highlighted in the tribunal's directions had been posted to all "residents". However, the applicant provided no confirmation that the application and documents had been displayed in the hall / notice board.

The leaseholders' case

9. None of the leaseholders have objected to this application, although the tribunal were not satisfied that the directions had been fully complied with. Specifically, there is no evidence that the application with documentation has been displayed in the hall / notice board.

Reasons for Decision

10. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;

44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

11. It is not clear to the tribunal whether people listed in the schedule attached to the application are in fact leaseholders and if so the extent to which they are responsible for the costs of the investigation works.
12. The tribunal note a reference to "residents" in an email dated 28th August 2019. However, the schedule and the application refer to leaseholders and liability for major works.
13. The application failed to confirm that the application was displayed in the communal area of the building as directed.
14. The evidence shows that works are urgent, on the basis that the applicant contends that there are six large scale leaks within the block which has caused damage estimated at over £200,000. This has led to concerns being expressed about the viability of insuring the premises. The landlord intends to carry out work to replace the cold water supply with new copper pipes.

15. The tribunal therefore found that it is reasonable to dispense with the statutory requirements. However, while permission is allowed and consultation under s.20 is dispensed with, works must not be commenced until the following direction had been complied with:-

(a) The managing agents must display the application notice, all documentation referred to in the directions of 21 August 2019 and this decision in the communal areas within 48 hours of receipt of this decision.

(b) The managing agents must then confirm that this direction has been complied with in writing to the tribunal, prior to the commencement of works.

D. Brandler

**Tribunal Judge
Brandler**

23rd September 2019

APPENDIX 1
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.

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APPENDIX 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—

- (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.

- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.