



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

- Case Reference** : LON/00AY/LDC/2020/0144 P
- Property** : Flats 1-15 Sackett House, Cowley Road, London SW9 6HF
- Applicant** : The Mayor and Burgesses of the London Borough of Lambeth
Ref: HOS/LIT/KRABBY/SACKETTHOUSE/612160
- Representative** : Legal services
London Borough of Lambeth
- Respondent** : The leaseholders of flats 1-15 Sackett House
Cowley Road. The details of the leaseholders are
appended to the application
- Representative** : Vanesa Jacques, Cowley EMB
- Type of Application** : An application under section 20ZA of the Landlord
and Tenant Act 1985 for dispensation from
consultation after carrying out works
- Tribunal Member** : Mr I B Holdsworth FRICS MCI Arb
- Date and venue of Hearing** : 1st December 2020 on paper determination
- Date of Decision** : 2nd December 2020

DECISION

Decisions of the Tribunal

This has been a remote hearing on the papers which has been not objected to by the parties. A face to face hearing was not held because all issues could be determined on paper. The documents referred to in this decision are in a submitted bundle of 184 pages, the contents of which are noted.

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works to repair a water supply leak to the premises (defined as “leak repair works”) and to subsequently reroute and renew the water supply (the “pipe relay works”) at Flats 1-15 Sackett House, Cowley Road, London SW9 6HF required under s.20ZA of the Landlord and Tenant Act 1985 for the reasons set out below. The agreed cost of the works is £33,391.75 inclusive of VAT.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the statutory consultation requirements associated with undertaking essential repair and renewal of the water supply to Flats 1-15 Sackett House, Cowley Road, London SW9 6HF “**the property**”.
2. An application was received by the First-tier Tribunal dated 10 September 2020 seeking dispensation from the consultation requirements. Directions were issued on the 8th October to the Applicant. These Directions required the Applicant to advise all Respondents of the application and provide them with details of the proposed works.
3. The Directions were subsequently modified by letter from the tribunal to reflect the difficulties caused by Covid-19 restrictions.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. This matter was determined by written submissions. The Applicant submitted a bundle of relevant materials to the Tribunal. The bundle included an Applicants Submission laying out a justification for the application, a specimen lease of flat 4, supporting photographs and a detailed response to the comments received from the Respondents.

6. Responses were received by tribunal from the leaseholders of flats 4, 5, 7 and 13 after the Respondents were advised of the intention to seek dispensation from the statutory consultation procedure by the Local Authority.

The background

7. The property which is the subject of this application is a 1930's Local Authority built 5-storey building with 15 self-contained flats.
8. The Tribunal are told that on or around the 26th June 2019 a water leak was reported to the LB Lambeth maintenance team (the "Council").
9. This failure was caused by a water leak in the supply pipe that served the building from the street. The water leak was initially identified seeping into the ground floor electrical intake cupboard.
10. The Tribunal are told the Council maintenance team were concerned that the leak from the supply pipe could pose a significant Health and Safety risk. They decided to divide the necessary repair works into two: 1) Initial leak repair work to stem the leaking water from the damaged supply pipe, and 2) relaying of the water supply from the main to the property around the perimeter of the building away from the electrical circuitry. This application is for retrospective dispensation for both these works as they are now completed.
11. The leak repair works were commissioned from OCO Ltd, a Contractor engaged on a Long Term Qualifying Agreement (LTQA) on 1st July and we are told by the Council Applicant that they were completed on or around 25th October 2019. The same contractor was instructed to carryout the pipe relay works which we are told by the Council were completed on 26th October 2019. This completion date is contradicted by the Respondents who claim completion did not take place until late November 2019.
12. It is not apparent from the Applicants submission that any consultation was undertaken prior to carrying out either sets of works.
13. At section 15 of the Council Submission (Page 14 of the bundle) the total combined cost is given as £33,391.75. There is no indication in the Applicants submission that a works scope and quote was obtained from OCO Ltd prior to commencement of the repair and/or renewal scheme.

The Applicants submission

14. The Applicant did not carry out any statutory consultation prior to works which were completed in the final quarter of 2019. It acknowledges this lack of consultation will not satisfy the requirements of *The Service Charges (Consultation Requirements) (England) Regulations 2003* under *Schedule 4 of Section 20* of the 1985 Act. It now seeks retrospective dispensation from these procedures for the completed works through this application.
15. The Applicant contends that both categories of the works were needed urgently to ensure the integrity of the property. They argue the leak repair works were an emergency. The proximity of the leaking water to the electrical supply was deemed a “high risk which posed a Health and Safety risk to all residents of the building.” Accordingly, the Council had to act without delay (see section 20, page 14 of the bundle). A similar argument is made for the pipe relay work although no evidence is offered just a statement that delay may have led to further leaks and a possible interruption to supply.
16. The Council maintains dispensation from the relevant consultation requirements caused no prejudice to the leaseholders. They rely upon the guidance provided by the Supreme Court decision *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 in reaching this conclusion.
17. The Council claim the leaseholders offer no evidence to support their complaint that the lack of consultation was unnecessary and unhelpful to the residents. It is the opinion of the Respondents it led to a worse outcome for them as leaseholders.
18. The Council accept there was some delay to undertaking and completing the works but challenge the evidence presented by the Respondents. They say that the lack of consultation about these works has made no difference to the outcome for the leaseholders.

The Respondents submission

19. The leaseholder to flat 4 objected to the scheme but provided no reasons for their objections. The leaseholder to flat 5 is willing to accept the leak repair works were urgent works but claims it was reasonable to expect some consultation before the pipe relay works. He pointed out it took the Council almost 6 months to implement the repair and some of this time could have been devoted to consultation. The obligation to consult with tenants under the TMO agreement was also raised.

20. The owner of flat 7 disputes the reasonableness of the charge estimated at some £2,226 per leaseholder. The remit of this application does not address reasonableness or payability of the charges.
21. The leaseholder of flat 13 makes a comprehensive rebuttal of the arguments made by the Council. Her submission focuses on the length of time taken to identify and carry out all the works. This leaseholder concurs with the leaseholder of flat 5, that the Council took so long to implement the works that consultation could have taken place in parallel without any extension to the completion date.

Determination

20. The *Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854* decision referred to by the Applicants clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
21. The Tribunal has addressed its mind to any financial prejudice suffered by the leaseholder's due to the failure to consult. No evidence was submitted of any financial loss by either party. The works were carried out by a contractor engaged under a LTQA. The Tribunal is told at (see page 13 of the bundle) that the contractor OCO Ltd was appointed after a tendering and consultation exercise which complied with the 2003 Regulations of the 1985 Act.
22. It is appropriate for the selection of any contractor to be made on more than the submitted cost of the quotation. Any assessment must consider the likely quality of works, together with timeliness of delivery and likelihood of compliance with all necessary contractual and statutory obligations.
23. Any LTQA selection procedure will have dealt with these matters and therefore the Tribunal accepts the appropriateness of the appointment of OCO Ltd to carry out the works. There remains a concern that no detailed works scope or quote was obtained before embarking on the scheme.
24. The Applicants also argue that the leaseholders failed to identify and present evidence of any other prejudice arising from the lack of consultation prior to the works.
25. After careful consideration of the submissions made by both parties the Tribunal are unable to identify any prejudice to leaseholders caused by the lack of consultation.
26. It is noted by Tribunal that the reason for the 6 month time period for carrying out the works was unexplained by the Council. Also, the

necessity to carry out the pipe relay works without preliminary consultation was poorly justified but nevertheless no prejudice was proven. The Tribunal do identify a manifest lack of engagement with the tenants of the property about these repairs.

27. The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the leak repair works and pipe relay works. **This application does not concern the issue of whether any service charge costs are reasonable or payable.**
28. There was a demonstrated need to carry out the works urgently to minimise the risk of significant further damage to the property and reduce the likelihood of harm to the residents. The Tribunal cannot identify any prejudice caused to the Respondents by the grant of dispensation from the statutory consultation procedure.
29. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case.
30. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed in respect of the leak repair works and pipe relay works with a total cost of £33,391.75 subject to these works falling under the Landlord's obligations under the leases of the flats.
31. **The Tribunal decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.**
32. **In accordance with paragraphs 9 and 10 of the Directions, it is the Applicant's responsibility to serve a copy of the Tribunal's decision on all Respondent leaseholders listed on the Application.**

Valuer Chairman Ian B Holdsworth

2nd December 2020

Appendix of relevant legislation

Section 20 of the Act

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long-term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)