



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

**Case reference** : **LON/00BJ/LDC/2020/0088**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **1-56 Wildcroft Manor, Wildcroft Road,  
London SW15 3TS**

**Applicant** : **Wildcroft Manor Limited**

**Representative** : **Mr R Bhose, QC**

**Respondents** : **The leaseholders of the Property**

**In attendance and  
representing  
themselves as one  
of the Respondents** : **Mr P Menon and Mrs P Menon,  
leaseholders of Flat 15**

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

**Tribunal members** : **Judge P Korn  
Mr M Cairns MCIEH**

**Date of hearing** : **18<sup>th</sup> November 2020**

**Date of decision** : **27<sup>th</sup> November 2020**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing. The documents to which we were referred were in electronic document bundles, the contents of which we have noted. The tribunal's decision is set out below in the paragraph headed "Decision of the tribunal".

## **Decision of the tribunal**

The tribunal dispenses unconditionally with those of the consultation requirements which have not been complied with by the Applicant in respect of the qualifying works which are the subject of this application.

## **Background**

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 restore a hot water supply to 24 flats within the block.
3. The Applicant was content for the application to be dealt with on the papers, without a hearing. However, the leaseholders of Flat 15 requested an oral hearing, as was their right.

## **Applicant's case**

4. The Applicant states that, as a result of a failure of underground, asbestos-clad, heating distribution pipework, 24 of the flats currently do not have a hot water supply. The vast majority of residents are over the age of 70 and are deemed vulnerable during the current pandemic. They are therefore staying at home and are unable to access any alternative hot water facilities.
5. A first-stage Section 20 notice has been issued to leaseholders. The Applicant has included within the hearing bundle copies of two reports on the works required which were prepared by KKAD Ltd and Energylab Consulting Limited respectively.
6. At the hearing, Mr Bhoose for the Applicant took the tribunal through the background circumstances, explaining that the pandemic stalled the carrying out of planned works to improve the old system which was known to need modernising. The emergency situation arose because there was flooding in the boiler room due, according to the Applicant's professional consultants, to a leak from a hot water flow pipe. The

consultants considered various options as to the best way forward and then concluded that the only realistic short-term solution was to create a new subterranean system. The works also include some precautions against other pipes failing. These precautionary works cost about £13,000, which is about 6% of the overall cost.

7. The emergency repair works are now well advanced although they are not yet at the stage of practical completion. There was a delay in starting the works due to the need to obtain a licence in connection with the presence of asbestos.
8. The Applicant has kept leaseholders informed throughout, but due to the urgent nature of the works it has been unable to carry out a full statutory consultation. None of the leaseholders has raised any objections apart from Mr and Mrs Menon. Indeed, the general reaction amongst leaseholders was a keenness for the Applicant to proceed with the proposed works as soon as possible.
9. On the question of whether any of the leaseholders has suffered any prejudice as a result of the failure to consult, none of the leaseholders has claimed any prejudice.

### **Respondents' case**

10. In written submissions, Mr and Mrs Menon raised various objections, although the extent of their objections has narrowed between the date of their original written submissions and the date of the hearing.
11. Mr Menon, on behalf of himself and Mrs Menon, said at the hearing that they acknowledged the need for the emergency works and did not want to reverse those works. Their concern now was that they wanted more information. The tribunal put it to Mr Menon that his wish for further information, however understandable, was not necessarily a basis for the tribunal to refuse to grant dispensation from full consultation in respect of what the Applicant submitted were emergency works.
12. None of the other Respondents has objected to the application for dispensation.

### **Discussion between the Applicant and the Menons**

13. After hearing the parties' initial oral submissions, the tribunal invited the Applicant's representative to explore with the Menons whether the Applicant might be able to commit to providing the Menons with some further information in due course, possibly in return for the Menons withdrawing their objection to the application for dispensation. Both parties were happy with this approach and there was an adjournment.
14. After the adjournment the parties confirmed that they had been able to reach an agreement whereby the Menons would formally withdraw their objections to the application upon the Applicant agreeing:-

(A) To provide to Mr and Mrs Menon the following copy documents by 5pm on 28<sup>th</sup> November 2020 (by email only):

1. Copies of the quotations identified on pages 202 and 203 of the hearing bundle;
2. Copies of quotations received from A&G Heating and Quotehedge;
3. A copy of the Asbestos Risk Assessment for the building (a copy of which was provided in the previous tribunal application).

(B) To answer the following questions by email by 5pm on 28<sup>th</sup> November 2020:

1. In the communication from KFH on 11 June (page 170 of the hearing bundle), it was mentioned that a resident raised the question of KFH's experience on a similar issue – the response to which was that KFH have never encountered a problem such as this. What efforts, if any, were made by the Applicant given the lack of experience of KFH to find an alternative project manager?
2. What process did KFH follow to engage the suppliers such as the asbestos specialists, technical coordinators given that a significant level of costs have been incurred on them – were there competitive bids obtained and can we see them?
3. On 8<sup>th</sup> July there was a communication (page 175) from the landlord regarding costs having moved from £90,000 to £178,000 – can we have further information detailing the cost movement and/or change in scope such that the 2 numbers could be reconciled?
4. On Page 202 – Expense overview – Estimated project cost of c.178K was provided as at 7 July – can we have information/an update to residents as to where are we with the total cost base and highlight the areas of overrun?
5. Have there been any service level agreements with the suppliers such that any delays or remedial works for poor quality standards are not being charged to the service charge pool?

(C) To arrange for a zoom meeting between Mr and Mrs Menon and KKAD (and a member of the Board) to ask questions relating to the emergency works, the subject of this application.

### **The relevant legal provisions**

15. 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”*.
16. 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**

17. Mr and Mrs Menon have now withdrawn their objection to the application on the basis set out above, and none of the other Respondents has raised any objections. However, as noted at the hearing, it does not automatically follow that dispensation from compliance with the statutory consultation requirements should be granted.
18. Having noted that it is not an automatic process, we are nevertheless able to confirm that we are satisfied in this case that the statutory consultation requirements can retrospectively and unconditionally be dispensed with to the extent that they have not already been complied with. These were emergency works needed to restore hot water for residents of 24 flats, the vast majority of whom are over the age of 70 and deemed vulnerable during the current pandemic and who are therefore staying at home and are unable realistically to access any alternative hot water facilities.
19. There has been some formal consultation, to the extent reasonably possible in the circumstances, and some significant informal consultation. There is evidence of the Applicant having explored various options and having advised leaseholders of these. In relation to the precautionary works, it is arguable that these did not have to be carried out and that if they had amounted to a large percentage of the total value of the works there might have been an argument that consultation in respect of those works was being avoided to the potential detriment of leaseholders. However, as they only amount to 6% of the total value and as the evidence suggests that the precautions in question are very prudent ones, we do not consider there to be an issue here.
20. There is no actual evidence that any of the leaseholders has suffered prejudice as a result of the lack of full formal consultation and none of the Respondents has claimed any prejudice.

21. 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**

22. There were no cost applications.

**Name:** Judge P Korn

**Date:** 27<sup>th</sup> November 2020

### **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).