



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

Case reference : **LON/00AW/LDC/2021/0009P**

Property : **2-3 Egerton Gardens, London SW3
2BS**

Applicant : **The Wellcome Trust Limited**

Representative : **David Morton 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 : **30th March 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 those of the consultation requirements not complied with by the Applicant 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 balcony of Flat 11 including lifting tiles and applying new substructure, tiles and leadwork following a leak into Flat 6 below. 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 14 flats. The Respondents are the long leaseholders of those of the flats which are held on long leases.

Applicant’s case

4. On 6th November 2020 Savills (UK) Ltd, the Applicant’s managing agents, were alerted to a rainwater leak affecting Flat 3 (*although this appears to be a typing error, as elsewhere the Applicant refers to Flat 6*). The leak had affected a large section of the bedroom ceiling and two walls in the same room. Upon investigation, rainwater was found to be penetrating through the tiled balcony terrace of Flat 11, which is directly above that bedroom.
5. A contractor was instructed to take up a section of tiles to assess the sub-floor condition and to trace the point of rainwater penetration. This work took place on 18th November 2020. On taking up these tiles, the contractor found several defects on the balcony floor including cracking, and there was water pooling. Tarpaulin was laid over the relevant area as a temporary measure to prevent further ingress into Flat 6.
6. Quotes were obtained to take up the remainder of the tiles and to undertake the necessary repairs. Quotes were received from Foxleys (£9,348 inclusive of VAT) and from N-Compass London (£6,324 inclusive of VAT). The work proposed by Foxleys was more extensive, but in an effort to minimise costs and in the hope that N-Compass London’s solution would suffice the Applicant instructed N-Compass London to carry out the work.

7. Once the sub-floor was exposed it was found to be in very poor condition, and N-Compass offered an additional quote of £3,180 to apply a new waterproof membrane to the whole terrace sub-floor. This quote was accepted.
8. The Applicant has provided copies of Foxleys' quote and of N-Compass London's two quotes.
9. The Applicant seeks dispensation from compliance with the statutory consultation requirements on the ground that to have delayed the works in order fully to consult with leaseholders would have resulted in additional water damage to Flat 6's sole bedroom, potentially rendering it uninhabitable.

Responses from the Respondents

10. There have been no objections from any of the Respondents to the application.

The relevant legal provisions

11. 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"*.
12. 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

13. Whilst the Applicant initially obtained two quotes, there is no evidence before me that the Applicant consulted leaseholders at all at any stage, whether formally or informally. This is far from ideal, and it is hard to see why some element of consultation could not have taken place.
14. 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.
15. In this case, there is some evidence to indicate that the works were urgent and the point has not been contradicted by or on behalf of any of

the Respondents. Also, and importantly, whilst there has been no formal compliance and minimal informal compliance, none of the leaseholders has objected to the application.

16. 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.
17. 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.
18. 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.
19. Accordingly, I grant unconditional dispensation from compliance with those of the consultation requirements not complied with by the Applicant.
20. 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

21. There have been no cost applications.

Name: Judge P Korn

Date: 30th March 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.