



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

**Case reference** : **LON/00AW/LDC/2021/0073P**

**Property** : **2-16 Onslow Square, London SW7  
3NP**

**Applicant** : **The Wellcome Trust Limited**

**Representative** : **Luke O’Connell 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** : **4<sup>th</sup> May 2021**

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**DECISION**

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**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 the consultation requirements 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 repair and waterproof the balcony of Flat 7 at a cost of £3,177.60 inclusive of VAT. 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 22 flats. The Respondents are the long leaseholders of the flats.

## **Applicant’s case**

4. Following a report into a leak into Flat 5, N-Compass London attended the Property on behalf of the Applicant to investigate the cause. N-Compass then reported back that they had found cracks in the balcony of Flat 7, that flat being the one immediately above Flat 5. N-Compass then provided a quote to repair and waterproof the balcony of Flat 7.
5. Due to the size of the leak into Flat 5 and the risk of the ceiling falling down, the Applicant states that it was unable to source a second quotation and it instructed N-Compass, through its managing agents, to proceed with the work.
6. The Applicant seeks dispensation from compliance with the statutory consultation requirements on the ground that to have delayed the works in order to consult with leaseholders would have resulted in further damage to Flat 5, leaving it uninhabitable.

## **Responses from the Respondents**

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

### **The relevant legal provisions**

8. 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”*.
9. 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**

10. There is no evidence before me that the Applicant has been through any consultation process with leaseholders, whether formally or informally.
11. 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.
12. In this case, there is evidence to indicate that the works were urgent, in the sense that delay could have led to further damage (including a collapsed ceiling) and could have rendered Flat 5 uninhabitable. The Applicant’s submissions on this point have not been contradicted by or on behalf of any of the Respondents. Also, and importantly, whilst there has been no compliance with the consultation requirements, none of the leaseholders has objected to this application.
13. 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.
14. 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.
15. 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.

16. Accordingly, I grant unconditional dispensation from compliance with the consultation requirements.
17. 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**

18. There have been no cost applications.

**Name:** Judge P Korn

**Date:** 4<sup>th</sup> May 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.