



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

Case reference : **LON/00AY/LDC/2021/0092**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **102-106 Bedford Road, London SW4 7HA**

Applicant : **The Mayor and Burgesses of the London Borough of Lambeth**

Representative : **Rasel Ahmed, Litigation Manager, Homeownership Services at the Applicant**

Respondent : **Matthew Grant Hilary**

Type of Application : **Dispensation with statutory consultation requirements under s.20ZA Landlord & Tenant Act 1985**

Tribunal member(s) : **Judge N Rushton QC
Mrs J Mann MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **21 June 2021**

Date of decision : **21 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined on paper. The documents to which the tribunal were referred were in a bundle of

51 pages, plus associated correspondence with the tribunal, the contents of which have been considered by the tribunal.

Decision of the tribunal

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

The application

1. The Applicant local council is the freeholder and landlord in respect of the 5 flats at 102-106 Bedford Road, London SW4 7HA (“**the Property**”), a block of flats. The Property is said to be mixed tenure, the application stating that two flats were occupied under long leases.
2. However the Applicant’s submissions state that only one flat, 104 Bedford Road, is occupied under a long lease. The Applicant has subsequently clarified that this is correct, by an undated letter from its litigation manager and representative, Rasel Ahmed. The Respondent, Mr Hilary, is the leaseholder of that flat. On 4 May 2021 the directions were accordingly amended to provide that he be the sole respondent.
3. A copy of the lease for 104 Bedford Road was included in the bundle. It includes provision for the payment by the leaseholder of service charges for among other things repair and maintenance works carried out by the landlord.
4. The Applicant seeks dispensation pursuant to Section 20ZA of the Landlord & Tenant Act 1985 (“**the Act**”) in respect of consultation requirements in relation to certain “**Qualifying Works**” (within the meaning of the Act).
5. The Qualifying Works comprised the repair of a burst water main supplying the Property. The Applicant’s submissions state that the burst was confirmed to be on the Applicant’s land and was sufficiently severe to pose a threat to the water supply to the Property and require urgent repair. The works were carried out on about 11 August 2020.
6. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper determination

7. The Application is dated 29 March 2021. Directions were issued by Judge Korn on 27 April 2021 and were amended as described above by Ms H C Bowers on 4 May 2021.

8. Those directions among other things required the Applicant by 5 May 2021 to send each of the (relevant) leaseholders by email, hand delivery or first class post: copies of the application form (excluding any list of respondents) unless already sent, and the directions.
9. By an email dated 29 April 2021 to the tribunal, Mr Ahmed confirmed that a copy of the directions had been sent to the Respondent. The tribunal understands that the Respondent had therefore already received the application. It is noted that Mr Ahmed states in his submissions that the Respondent has not opposed the application.
10. The application stated that it concerned a qualifying long term agreement (“QLTA”), which the Applicant had already entered into. It also stated that the only consultation carried out with the Respondent related to entering into the QLTA itself. The application said a schedule 3 Notice of Intention was not completed due to the urgent nature of the works.
11. The Applicant’s submissions state that on 10 August 2020 it instructed its QLTA contractor T Brown to attend and survey the leak and that T Brown informed the Applicant that the burst was severe and if left any longer was likely to cause disruption to the water supply to the Property. T Brown also confirmed that the leak was on the Applicant’s side of the boundary. The submissions further state that on 11 August 2020 the Applicant raised a work order for the contractor to carry out the necessary works, which it deemed an emergency, without consulting the leaseholders. Further, while on site, the contractor identified further leaks further down the pipe which were repaired at the same time.
12. The Applicant accordingly accepts that it did not carry out any consultation pursuant to section 20 of the Act and regulations under it. It submits that the Respondent has suffered no prejudice because (a) the works were appropriate and necessary; and (b) the price was value for money because the works were carried out under the QLTA.
13. The bundle includes a final invoice for a total of £4,044 including VAT submitted by JWB Services Ltd to T Brown Group Ltd dated 31 August 2020, for “*Water leak beside 104 Bedford Road*”. The works carried out are described as “substantial leak – burst main” and included excavating and exposing the area of leakage, cutting out and renewing pipework, testing, backfill and reinstatement. Three photographs of the works were included.
14. No response and no objection has been submitted by the Respondent, who has taken no active part in this application.

15. The directions provided that the Tribunal would determine the application on the basis of written representations unless any request for an oral hearing was received by 4 June 2021. No such request has been received. This application has therefore been determined by the Tribunal on the papers supplied by the Applicant.
16. The directions state expressly that the Application only concerns whether it is reasonable to dispense with the statutory consultation requirements and does not concern the issue of whether any service charge costs resulting from the works are reasonable or payable.

The law

17. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

18. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] 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'*.

Findings of fact

19. The Application and submissions give the following reasons for seeking dispensation: due to the severity of the leak, and risk to the water supply at the Property, the works needed to be completed as soon as possible and as an emergency; lack of prejudice given the works were carried out pursuant to the QLTA.
20. The details of the works in fact carried out and invoiced are set out above. The Tribunal finds that the works have been carried out, as described in the invoice and photographed, on or shortly after 11 August 2020.
21. No s.20 notice has been served on the Respondent.

22. The Tribunal is satisfied on the basis of the statements in the Application, the submissions and the documents in the bundle, and in the absence of any representations from the Respondent, that the Qualifying Works were necessary and urgent in nature, given the severity of the leak and risk to the water supply to the Property if they were not urgently carried out.
23. In the absence of any submissions from the Respondent objecting to the works, the Tribunal found no evidence that the Respondent would suffer prejudice if dispensation were to be granted.

Determination

24. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.
25. This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

Name: Judge N Rushton QC

Date: 21 June 2021

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).