



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

**Case reference** : **LON/00AY/LDC/2022/0252**

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

**Property** : **1-22 Shipley House, Albion Avenue,  
London SW8 2AH**

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

**Representative** : **In Person**

**Respondents** : **Leaseholders of 1-22 Shipley House,  
Albion Avenue, London SW8 2AH**

**Representative** : **N/A**

**Type of application** : **For the dispensation of the  
consultation requirements pursuant to  
s.20ZA of the Landlord and Tenant Act  
1985**

**Tribunal member** : **Mr Richard Waterhouse FRICS**

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

**Date of decision** : **14<sup>th</sup> March 2023**

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**DECISION**

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

This has been a hearing on the papers which has been consented to/not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents that the tribunal was referred to are in a bundle of 63 pages, the contents of which have been taken into consideration.

## **The tribunal's summary decision**

- (1) The tribunal grants dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of installation of the temporary boiler.**
- (ii) The tribunal grants dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of permanent replacement boiler.**

## **The application**

1. The applicant landlord has applied for retrospective dispensation from the consultation requirements in respect of:
  - (i) Replacement of existing boiler at an estimated £7184.96.
  - (ii) Installation of a temporary boiler with a cost of £6790.50.
2. The works were all carried out by the landlord.

## **Background**

3. The subject premises is a "mixed tenure 4 floor building with 22 flats consisting of 2-4-bedroom flats. There are 9 leasehold flats.

## **The applicant's case**

4. In the application, the applicant freeholder asserts the boiler works were necessary and urgent. The freeholder also asserted the leaseholders were informed in compliance with the directions. The leaseholder of Flat 11 responded, with an observation, that they had been disconnected from the boiler since 2019 and consequently were not liable for the service charge relating to such and requested the section 20 be withdrawn in relation to their property. The Council agreed and withdrew the notice in respect of that leasehold property.

## **The respondents' case**

6. None

## **The tribunal's decision and reasons**

7. In reaching its determination, the only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable and those issues, if in dispute may be the subject of the appropriate application to the tribunal.
8. The tribunal grants dispensation from consultation in respect of:
  - (i) The installation of the replacement boiler.
  - (ii) The installation of the permanent boiler.
9. In reaching its determination the tribunal considered *Daejan Investments Limited v Benson* [2013] UKSC 14 and the correct legal test to be applied i.e.

Would the flat owners suffer any relevant prejudice and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?
10. The factual burden of identifying some relevant prejudice is on the leaseholders and to establish what steps they would have taken had the failure to consult had not occurred and how have they been prejudiced as a result.
11. The extensive representations from both parties, made clear the deteriorating relationship between the parties and the ongoing claims of damage caused by tenants of the leaseholders to the freeholder's flat and the threat of forfeiture proceedings with allegations of fraud and theft being made by the respondents.
12. However, for the purpose of this application for dispensation from consultation, the tribunal is not concerned with those matters or whether the costs of the works for which dispensation is sought, are reasonable. The tribunal is solely concerned with whether the respondents are prejudiced by the lack of consultation and if so, how and to what extent?

13. The tribunal also finds the works carried out for which dispensation is sought were urgent.
14. Therefore, having regard to *Daejan Investments v Benson & others* [2013] UKSC 14 the tribunal considers it is reasonable to grant dispensation from the requirements of section 20 of the Landlord and Tenant Act 1985.

**Name:** R Waterhouse FRICS

**Date:** 14<sup>th</sup> March 2023

### **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).