



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

Case reference	:	LON/00AG/LDC/2023/0095P
Property	:	17-23 Farringdon Road and 28 Saffron Hill, London EC1N 8FA
Applicants	:	AGA Pensions (1974) Limited and ARG Trustees (1970) Limited as trustees of the AGA Rangemaster Commingled Fund
Representative	:	Katie Briggs, Solicitor, of Browne Jacobson LLP
Respondents	:	The leaseholders of the Property
Type of application	:	Dispensation from compliance with statutory consultation requirements
Tribunal member	:	Judge P Korn
Date of decision	:	15 June 2023

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 Applicants confirmed that they 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 Applicants seek 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 consist of repair works to the external roof. The Property is a development comprising 14 residential flats, with commercial premises on the ground floor.

Applicants’ case

3. The stated reason for the application is that, during unrelated fire safety works, it became apparent that roof repair works were needed and that the scaffolding which was already in situ for the fire safety works could be utilised for the roof works as long as the roof works were commenced swiftly. Making use of the existing scaffolding will, in the Applicants’ submission, represent a substantial cost saving for the Respondents.
4. During the course of the carrying out of the fire safety works, a survey of the structure of the building’s roof was carried out by Alumasc Roofing. This led to a report being produced on 15 November 2022, a copy of which has been provided. The report concluded that the zinc roof had exceeded its serviceable life and required immediate refurbishment. It also stated that the plant roof was reaching the end of its serviceable life and should be considered for refurbishment. Two quotes were obtained for the works, both of which were on the basis that the existing scaffolding remained in situ.
5. The Applicants have been advised that delaying the works to wait until completion of a full statutory consultation would lead to substantial extra costs in reinstating the access scaffolding, removing and reinstating resident belongings, fixtures and fittings, removing and reinstating the decking and repairing collateral damage associated with the above items, as well as a possible increase on the current quote if the works are delayed. Their understanding is that these additional items would increase the quotes by around £70,000, meaning that the cheaper quote would increase to around £235,000. In circumstances where the Applicants have formed the view that the works need to be carried out on an urgent basis in any event, this increase in costs was

deemed by them to be unreasonable, particularly as most of the increase would be passed on to the leaseholders.

Responses from the Respondents

6. None of the Respondents has written to the tribunal raising any objections to the dispensation application.

The relevant legal provisions

7. 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”*.
8. 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

9. The Applicants have provided clear and helpful information in support of their application. Whilst it is not clear that the works are urgent in the sense of imminent danger of physical injury or imminent threat to essential services, the benefit to leaseholders in terms of probable cost savings and the desirability of not delaying the works in any event has been well articulated.
10. As is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key issue when considering an application for dispensation is whether the leaseholders have suffered any prejudice as a result of the failure to comply with the consultation requirements.
11. In this case, none of the Respondents has expressed any objections in relation to the failure to go through the full statutory consultation process, and there is no evidence before me that the leaseholders were in practice prejudiced by the failure to consult fully. Furthermore, I accept on the basis of the uncontested evidence before me that the Applicants’ approach is designed to lead to cost savings for leaseholders.
12. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. In this case the Applicants have made a strong application and no leaseholders have

raised any objections or challenged the Applicants' factual evidence. I therefore consider that it is reasonable to dispense with the consultation requirements.

13. As is also clear from the decision of the Supreme Court in *Daejan v Benson*, even when 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 specific prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
14. Accordingly, I grant unconditional dispensation from compliance with the consultation requirements.
15. It should be noted that 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

16. There have been no cost applications.

Name: Judge P Korn

Date: 15 June 2023

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.