



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

Case reference : **LON/00AY/LDC/2023/0064**

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

Property : **1-24 Marie Lloyd Court, Brighton Terrace, London, SW9 8DL**

Applicant : **London Borough of Lambeth**

Representative : **In House**

Respondents : **5 Leaseholders set out in the application**

Representative : **Not represented**

Type of application : **Application for dispensation from the consultation requirements of s20 under section 20ZA of the Landlord and Tenant Act 1985**

Tribunal member : **Mr A Harris LLM FRICS FCI Arb**

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

Date of decision : **9 August 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented 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 I was referred to are in a bundle of 60 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

1. The tribunal exercises its discretion to grant dispensation from the consultation requirements of s20ZA in respect of the works required to repair a leaking roof.

The application

2. The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of works required to repair corroded pipework on the roof forming part of the water supply to the building.
3. Directions were made on 12 May 2023 for a paper determination in the week commencing 7 August 2023. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements.
4. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The hearing

5. A written application was made by the legal department of the London Borough of Lambeth (the Council), the freeholder of the property and landlord under the leases dated 2nd of March 2023 . The case was decided on paper and no appearances were made. The tribunal considered the written application form, copy letters to the leaseholders, estimates and a specimen lease included in the bundle. The total cost of the works for which dispensation is sought was £19,774.05 plus VAT. As there are only 24 mixed tenure flats in the block of which 5 are leasehold this takes it over the consultation threshold of £250 per flat.

The background

6. The property is a purpose-built low-rise block consisting of 24 mixed tenure flats of which 5 have been sold on long lease. Each lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues.
8. A specimen lease has been provided showing the scope of the works is within the service charge provisions of the lease. A list of leaseholders has been provided with confirmation from the Council that they have been notified of the proposed works. No representations have been received objecting to the application as to the scope of the works or appropriateness of the application.
9. The Council have made written submissions in support of their application including the officer's justification report for emergency/urgent works setting out the reasons why the works were urgent. An estimate from the Council's contractor is also included. The contractor is appointed under a qualifying long term agreement.
10. The application also includes legal submissions referring to *Daejan Investments Ltd v Benson [2013] UKSC 14, 1 WLR 854* where the Supreme Court held that the relevant test is whether the leaseholders have suffered prejudice by the failure to consult. Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted.

The tribunal's decision

11. The tribunal exercises its discretion to grant dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003

Reasons for the tribunal's decision

12. The works were required to repair corroded pipework on the roof in in the winter of 2021 to 2022 as a matter of urgency as there was a risk of pipes bursting in winter weather causing a loss of water supply and likely internal damage. The leaseholders were notified on 14 December 2021 that dispensation from the consultation requirements of section

20 would be sought. The application was not made promptly and was not submitted until March 2023 although no reason for the delay has been given. The works have been completed.

13. The tribunal is satisfied that the leaseholders were aware of the works required and none have objected.

14. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:

“Where an application is made to a [leasehold valuation] 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*” (emphasis added).

15. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable. The test laid down by the Supreme Court in *Daejan v Benson* is whether the leaseholders would suffer prejudice if the application were to be granted and a full consultation not carried out.

16. The tribunal considers that there is no prejudice to the leaseholders in granting dispensation as the works were urgently needed to avoid further damage and leaseholders have been consulted and have not objected to the works. The tribunal is satisfied that the risk of delay outweighed any possible prejudice arising from a failure to carry out the full consultation process.

17. The tribunal is satisfied the works were urgent and that dispensation should be granted. As there is no prejudice are no conditions which should be applied.

Name: A Harris

Date: 9 August 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).