



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

Case reference : **LON/00BK/LDC/2023/0122P**

Property : **62-65 Trafalgar Square, London
WC2 5DS**

Applicant : **Trafalgar Square Management
(2014) Ltd**

Representative : **Sophie Pounce of D&G Block
Management Ltd**

Respondents : **The leaseholders of the Property**

Type of application : **Dispensation from compliance with
statutory consultation
requirements**

Tribunal member : **Judge P Korn
Mrs A Flynn MRICS**

Date of decision : **14 August 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 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 we have been referred are in an electronic bundle, the contents of which we 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 consist of works to replace the Property’s video door entry system. The Property is a late 1800s converted Edwardian house comprising 5 residential flats and a commercial element.

Applicant’s case

3. The Applicant states that the Property is serviced by a bespoke video door entry system which includes cameras, software, a proximity access system, a computer, a server to support the system, and access fobs. The system failed due to a power outage. The previous system was operating under Windows 7 which itself could not be upgraded to support the new equipment, and the system was too old with parts no longer in production to support piecemeal replacements.
4. The failure of the equipment caused access and security issues, as the residents could no longer access the building with their fobs and could not use their door entry systems to monitor visitors to their flats. In addition, the onsite staff could not monitor visitors to the building. The Property is located within Trafalgar Square, and due to its location security and controlled access are considered to be paramount. The Applicant states that it began the section 20 consultation process and that leaseholders were kept informed of progress.
5. The Applicant has provided a detailed timeline. On 4 July 2022 the onsite porter reported that the door entry system was not working, and all leaseholders were informed and told that a contractor had been instructed to investigate and repair if possible. On 7 July 2022 leaseholders were informed that a complete replacement of the system would be needed and an initial quote for replacement was circulated to them. On 8 July 2022 leaseholders gave their written agreement to going ahead with a replacement. On 13 July 2023 Notice of Intention and 2 quotes for replacement were issued to leaseholders, and on 28 July 2022 leaseholders were informed of a slight variation to the cost following an onsite review, although the most competitive quote remained the most competitive.

6. The Applicant is seeking dispensation from full compliance with the section 20 consultation process. Leaseholders were in agreement with the works going ahead urgently, due to the security and access risk to the building, and they were consulted regarding the works and provided with opportunities to raise any queries. The work was competitively tendered.

Responses from the Respondents

7. None of the Respondents has written to the tribunal raising any objections to the dispensation 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. The Applicant has provided helpful information in support of its application. There was some urgency to the works for security and access reasons, especially given the location of the Property. The Applicant did at least go through part of the statutory consultation process, and there was competitive tendering and an opportunity for leaseholders to raise queries.
11. 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.
12. 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 us that the leaseholders were in practice prejudiced by the failure to consult fully. Furthermore, we accept on the basis of the uncontested evidence before us that the Applicant did consult with leaseholders to the extent reasonably possible in the circumstances.

13. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. In this case the Applicant has made a strong application and no leaseholders have raised any objections or challenged the Applicant's factual evidence. We therefore consider that it is reasonable to dispense with the consultation requirements.
14. 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.
15. Accordingly, we grant unconditional dispensation from compliance with the consultation requirements.
16. 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

17. There have been no cost applications.

Name: Judge P Korn

Date: 14 August 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.