



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

Case reference : **LON/00AG/LDC/2023/0125**

Property : **140 Abbey Road, London NW6 4SR**

Applicant : **Stripecross Ltd**

Representative : **Matthew Phelan of HML Group**

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 : **6 November 2023**

DECISION

Description of hearing

This has been a determination on the papers without a hearing. 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.

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 repair/replacement works to high-level guttering following leaks and deterioration affecting the top flat and the basement flat. The Property is a circa 1840s semi-detached 4-storey house converted into 4 flats.

Applicant’s case

3. The Applicant states that the problems with the high-level guttering has caused water damage to the communal external walls and internal wall/ceiling. The exterior window-sill fascia to Flat 1 has crumbled and fallen into the communal garden area. Scaffold towers are required to access these areas to stop the water damage and to make safe.

Responses from the Respondents

4. None of the Respondents has written to the tribunal raising any objections to the dispensation application, and the Applicant has confirmed in writing that none of the Respondents opposes its application for dispensation.

The relevant legal provisions

5. 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”*.
6. 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

7. The Applicant has briefly explained why the works are considered to be urgent, and the explanation is a plausible one. There is, though, no evidence that the Applicant has taken any steps even to begin the consultation process. The information contained in the application is minimal, and in particular the application includes no information about the scope of the works nor about the anticipated or actual cost of the works. This is all the more surprising as the application states that the works have been completed, and therefore it should have been easy to provide this information. There is also no information on whether the Applicant obtained competitive quotes or whether it simply approached one contractor.
8. 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.
9. In this case, none of the Respondents has expressed any objections in relation to the failure to go through the statutory consultation process. There is also no specific evidence before us that the leaseholders were in practice prejudiced by the failure to consult. Furthermore, it seems on the basis of the uncontested evidence before us that the Respondents all agreed that the works needed to be carried out as a matter of urgency.
10. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. In this case the key factor in favour of dispensing is the lack of objections from the Respondents. If any of the Respondents had objected then the application could well have been vulnerable to challenge, given its failure to address the issues referred to above. However, as no leaseholders have raised any objections or challenged the Applicant's factual evidence, we consider that it is reasonable to dispense with the consultation requirements for that reason alone.
11. 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, none of the Respondents have claimed that they have suffered any prejudice in this case through the Applicant's failure to go through any part of the consultation process, and it is not for the tribunal to infer prejudice where none has been complained of.

12. Accordingly, we grant unconditional dispensation from compliance with the consultation requirements.
13. **It should be noted, particularly by the Respondents (i.e. the leaseholders), 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

14. There have been no cost applications.

Name: Judge P Korn

Date: 6 November 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.