



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

Case reference : **LON/00BK/LDC/2023/0295**

Property : **Rosebery Court, 15 Charles Street,
London W1J 5EX**

Applicant : **Rosebery Mayfair Residents
Company Limited**

Representative : **Brett Williams of Principle Estate
Management Ltd**

Respondents : **The leaseholders of the Property**

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

Tribunal member : **Judge P Korn
Mr A Fonka MSc FCIEH CenvH**

Date of decision : **19 December 2023**

DECISION

Description of hearing

The hearing was an oral hearing conducted remotely by video.

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 concerning the fire safety of the building. The Property is a purpose-built mid-terrace residential building comprising 22 apartments. There are two separate blocks and a shared basement car park.
3. The Applicant landlord is a leaseholder-owned company.

Applicant’s case

4. A Fire Compartmentation Survey was carried out on behalf of the Applicant on 16 October 2023, followed by a Fire Door Survey on 8 and 9 November 2023. The reports of the findings of those surveys were analysed and it was noted that several areas of failed compartmentation and various inadequacies in the communal fire doors had been found such that it could not be confirmed that they would withstand a fire for the necessary amount of time under current regulations.
5. 86 communal doors have been identified as needing some form of work, and 118 areas of compartmentation have been identified as being capable of contributing significantly to a spread of fire in the building if the defects are not remedied. The Applicant argues that the works are of an urgent nature due to the risk to life if the works are not completed quickly.
6. The Applicant’s managing agents wrote to the Respondents on 28 and 29 November 2023 with an explanation of the issues identified by the surveys. Those letters included other available information and an explanation as to why it was not considered possible to go through the whole of the statutory consultation process before carrying out the works.

The hearing

7. The hearing was attended (remotely) by Brett Williams of Principle Estate Management Ltd, the Applicant’s managing agents. None of the Respondents attended the hearing.
8. At the hearing, at the request of the tribunal, Mr Williams explained the background and talked the tribunal through the initial identification of

the fire safety problems, the works that were needed, the contents of the reports, and the reasons why the works were considered to be too urgent to wait for completion of the statutory consultation process.

9. Mr Williams said that it had not been possible to appreciate the degree of urgency of the works until the Applicant had received the report produced by specialist consultants. At that point the Applicant took the initial view that the fire safety issues were serious enough to warrant proceeding with the works without going through a full statutory consultation process. The Applicant consulted with leaseholders as much as reasonably possible, and fire safety issues were also discussed at the recent annual general meeting which was attended by the majority of leaseholders/Respondents.

Responses from the Respondents

10. Two of the Respondents have written to the tribunal in support of the dispensation application and none of the Respondents has written to the tribunal raising any objections to the application. At the hearing, Mr Williams confirmed that the Applicant had not received any objections from any of the Respondents.

The relevant legal provisions

11. 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”*.
12. 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

13. The Applicant has provided evidence of its having consulted with leaseholders by sending out detailed letters. There was also discussion of how to deal with fire safety issues at the recent annual general meeting attended by the majority of leaseholders/Respondents. The Applicant has also explained why the works are considered urgent for safety reasons.
14. 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.

15. 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. In addition, two of the Respondents have expressed positive support for this dispensation application, and there was recently a well-attended meeting at which leaseholders/Respondents had an opportunity to express any concerns. No such concerns have been identified. Furthermore, we accept on the basis of the uncontested evidence before us that the carrying out of the works is urgent for safety reasons. In addition, we note that the Applicant is a leaseholder-owned company and that therefore there is – at least in principle – a large degree of mutual interest.
16. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. In this case the Applicant has explained clearly and plausibly why the fire safety works need to be carried out as a matter of urgency, 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.
17. 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.
18. Accordingly, we grant unconditional dispensation from compliance with the consultation requirements.
19. **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.**
20. **The leaseholders/Respondents should also note that the Applicant has stated in its application that the building falls within the scope of the Building Safety Act 2022 (“the 2022 Act”). Leaseholders may wish to obtain legal advice on the protections afforded by the 2022 Act in respect of contributions for qualifying leaseholders towards the cost of remedying certain defects.**

Costs

21. There have been no cost applications.

Name: Judge P Korn

Date: 19 December 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.