



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

Case reference : **LON/00AN/LDC/2023/0298**

Property : **109, 111 and 113 Mirabel Road,
Fulham, London SW6 7EQ**

Applicant : **Southern Land Securities Ltd**

Representative : **Judith Parkhouse of Together
Property Management Ltd**

Respondents : **The residential leaseholders of
Together Property Management
Ltd**

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

Tribunal member : **Judge P Korn**

Date of decision : **5 February 2024**

DECISION

Description of hearing

This has been a remote hearing on the papers. 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 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 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 the replacement of a soil vent pipe and the carrying out of associated works to remedy problem with water ingress and foul smells.
3. The Property comprises a mid-terrace Victorian house converted into three self-contained flats.

Applicant’s case

4. The Applicant’s managing agents state that on 27 February 2023 they were made aware of water ingress and foul smells coming up through the floor of the basement flat. Following the attendance of contractors, Diamond Drains, the managing agents were informed that the rest bend joint on the soil vent pipe had been displaced and had broken away and that this was allowing waste water to drain directly under the building.
5. A quote for the necessary works was obtained from Diamond Drains and was forwarded to all leaseholders on 3 March 2023. The leaseholders were also informed that the quoted cost exceeded the section 20 threshold by £150 but that the works were considered urgent. They were also told that a retrospective application for dispensation would be made to the tribunal. The works were completed on 3 March 2023.
6. The hearing bundle includes a copy of a quote and a report from Diamond Drains and a copy of Diamond Drains’ invoice for the works.

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 explained why the works were considered urgent due to concerns about further waste water ingress and why, therefore, it did not go through a statutory consultation process before carrying out the works.
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 a statutory consultation process, and there is no evidence before me that the leaseholders were in practice prejudiced by the failure to consult. It is unclear why the Applicant waited so long before making the application for dispensation, but nevertheless I accept on the basis of the uncontested evidence before me that the carrying out of the works was urgent for reasons due to concerns about further waste water ingress. In addition, the extent to which the cost of the works has exceeded the consultation threshold is relatively modest.
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 explained why the works were urgent, and no leaseholders have raised any objections or challenged the Applicant’s factual evidence. I 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, I 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: 5 February 2024

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.