



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

Case reference : **LON/00AY/LDC/2023/0237**

Property : **Ponton House, 41 Palace Road SW2 3EQ
Chalner House, 140 Coburg Crescent
SW2 3HX
43 Palace Road, SW2 3EW
130-139 Coburg Crescent SW2**

Applicant : **London Borough of Lambeth**

Representative : **Sharpe Pritchard Solicitors**

Respondents : **Various leaseholders as per the
application**

Representative : **N/A**

Type of application : **Application for dispensation – s.20ZA of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr S Wheeler MCIEH, CEnvH**

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

Date of decision : **21 February 2024**

DECISION

Decisions of the tribunal

1. The tribunal finds it reasonable to grant the Applicant dispensation from all of the s.20 consultation requirements required by the Landlord and Tenant Act 1985 in respect of the additional works to the balconies, balcony soffits, electrical works and external redecoration to the 4 properties that are the subject of this application.
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The background

2. The applicant has applied for dispensation from the statutory consultation requirements in respect of various additional works to the original schedule of programmed major works to 4 blocks of flats as per the application containing a mixture of long leaseholders and periodic tenants. The works including the additional works have now been carried out and completed.
3. The original major works ('the original works') included:
 - (i) The external upgrade works and repairs and redecoration.
 - (ii) The replacement of roof coverings; replacement of windows with new PVCu double glazed windows; replacing/installing fire rated screens to the front of communal balconies; repairing existing timber and glass balcony balustrading;
 - (iii) The repair/re-coating asphalt walkways and balconies;
 - (iv) The repair of external walls, to include repairs to brickwork, defective timber cladding and concrete repairs; redecorating.
4. Works on site commenced on 4 April 2022. On or around 15 July 2022, it became apparent to the applicant that extensive additional works ('the additional works') were required in relation to:
 - (i) Balconies
 - (ii) Balcony soffits;
 - (iii) External redecorations; and
 - (iv) Electrical installations.

5. The applicant had carried out consultation in respect of the original works and dispensation is not being sought in respect of these. A preliminary letter was sent out to all the relevant leaseholders on 22 June 2020 informing them that their block was included in the Applicant's 2020/2021 major works programme. On 7 July 2020, the Applicant served a Notice of Intention under section 20 LTA 1985 setting out the proposed works and the reasons for them. The Notice of Intention gave the leaseholders until 11 August 2020 to provide any observations and/or to nominate a contractor and explained how the leaseholder should contact the Applicant. On 22 April 2021, the Applicant served a Notice of Estimate on all the leaseholders. The Notice stated that tenders had been obtained from 3 contractors, and that the contract would be awarded to contractor A. The Notice invited any observations by 27 May 2021 and explained how a leaseholder should contact the Applicant. The Notice included an Appendix setting out the Applicant's response to the observations received following the Notice of Intention.

6. However, when the need for more extensive works to be carried became apparent, the Applicant served an additional Notice of Estimate on all leaseholders on 18 October 2022, allowing only a shortened consultation period.

7. The Applicant now seeks dispensation from all or any of the consultation requirements for the additional works, as it submits that full consultation would have led to additional costs and/or delays, whereas it was more efficient and cost effective to add them to the original works which were ongoing on site. The Applicant accepts the additional electrical installation works were omitted in error from the further Notice of Estimate dated 18 October 2022 but asserts it was impractical to have a two-part consultation with leaseholders and it was most cost effective to have these and all of the additional works to be carried out despite the absence of full consultation.

The issues

8. The only issue for the tribunal to determine is whether or not it is reasonable to grant dispensation from consultation to the Applicant. The tribunal does not have jurisdiction in this application to determine issues of the reasonableness, standard or cost of the works. If any lessee wishes to challenge any of the works on these bases, they must make the appropriate application to the tribunal.

The hearing

9. As none of the parties requested an oral hearing the tribunal determined the application on the documents provided. These comprised a digital bundle of 591 pages containing representations from both the Applicant and fifteen leaseholders.

The tribunal's reasons

10. In reaching its decision the tribunal had regard to *Daejan Investment Limited v Benson and others* [2013] UKSC 14. The tribunal finds the Respondents have failed to identify any relevant prejudice which they suffered, or may have suffered, as a result of the Applicant's failure to comply with the consultation requirements. The tribunal finds that most of the Respondents' arguments concern the additional cost of the already substantial financial commitment placed on them by the original major works despite their acceptance that significant works were required to the 4 buildings.
11. In joint Statement of Case dated 29 November 2023 fifteen of the respondents submitted that they:

[A]cknowledge the overall need for maintenance works and investment to keep homes on the estate warm, safe and dry. However, we oppose this S20 dispensation, as we believe that the additional works were not urgent, were not appropriately surveyed, and were not market tested to ensure good value, and so have caused us loss of privilege.

Many responses to the original S20 notice of estimate in 2022 spoke of their financial distress, caused by many years (sic) worth of overdue works, neglect, and poor maintenance by the Landlord, being remediated all at once, causing a huge financial shock, and creating enormous personal debt for Leaseholders, totalling over £30,000.

12. The Respondents also submitted that:

- (i) The electrical works were not necessary, as it was not credible, they should suddenly be deemed to be 'unsafe.'
- (ii) Had the lessees been consulted on the additional electrical works, they would have requested an independent EICR report for each block.
- (iii) The s.20 consultation process was inconsistent and not all leaseholder received the October 2022 Notice of Estimate.
- (iv) It had been known to the Applicant that extensive balcony works were required and therefore all balcony works should have been consulted on and the initial stage and

any additional works could have waited while consultation was being carried out.

- (v) The lessees were not given any opportunity to challenge why only one vendor/contractor was asked for quote on the additional balcony works.
- (vi) The respondents accept that dispensation in respect of the balcony soffit works is reasonable.

13. In addressing the impact of dispensation being granted, the Respondents stated:

The leaseholders are already distressed about managing the looming bill of the s20 works, which is yet to be confirmed with us, especially due to the current cost of living crisis, where many and the of us are already struggling with vastly increased mortgage heating bills. We were told in 2021 it was going to be around £22,000 mark, but has now increased to around £30,000, including works that we were not given the opportunity to consult on, or demand market testing of, plus any extras that are still to be disclosed, and is having a massive impact on our life and mental health.

The unresolved omission of the Electrical Works from S20 estimates, and potential other undisclosed omissions, put us in further financial distress, because we haven't received clear estimates, so have not been able to budget, or update our arrangements with lenders, for the ever increasing, upcoming s20 bill, and the Council have no consideration of the impact of their poor project management and poor communications, on the Leaseholders' financial and mental health, and ability to manage our lives and finances. These omissions, corner cutting and overspends should be understood in the context that Lambeth were already 1 million pounds (~50%) over their project budget, and 17 weeks overdue at the last estimate.

14. The tribunal finds the lessees have failed to identify any substantial prejudice that has been caused as a result of the Applicant's failure to carry out the full consultation required by s.20 of the 1985 Act. The tribunal finds the Respondents' concerns are primarily related to the cost of additional works being carried. However, this is not a relevant issue for the purpose of this application for dispensation, as the tribunal finds the Respondents have not sought to provide to the tribunal any reports in respect of the additional works, that they would have sought to rely upon had they been consulted. Therefore, the tribunal finds the Respondents have failed to show they have suffered any relevant prejudice in their objections to the grant of dispensation.

15. The tribunal accepts the Applicant's evidence in respect of the additional electrical works and finds the need for these supported by the Reply dated 21 December 2021 in which it was said electrical testing was originally included in the major works and an EICR was prepared for each of the 4 blocks.
16. The tribunal accepts the Applicant's evidence in support of this application, including that in the witness statement dated 15 December 2023 of Chris Ojo, Major Works Consultation Officer. The tribunal finds the additional works were both necessary and to some degree, urgent. The tribunal also accepts the Applicant's failure to include the additional electrical works in the Statement of Estimates dated October 2022 was a genuine oversight and finds the Respondent's have, in any event, failed to identify any prejudice caused to them other than a potential increase in costs.
17. In conclusion the tribunal finds it reasonable to grant the Applicant dispensation from all of the s.20 consultation requirements in respect of the additional works to the balconies, balcony soffits, electrical works and external redecoration to the 4 properties that the subject of this application.

Name: Judge Tagliavini

Date: 21 February 2024

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).