



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

**Case reference** : **LON/00AY/LDC/2024/0083**

**Property** : **37-42 Kingscroft, Kings Avenue,  
London, SW4 8ED**

**Applicant** : **The Mayor and Burgesses of the London  
Borough of Lambeth**

**Representative** : **London Borough of Lambeth, Litigation  
Team  
Contact: Patrick Byfield**

**Respondents** : **Various Leaseholders**

**Type of application** : **For dispensation from statutory  
consultation**

**Tribunal member** : **Mr O Dowty MRICS**

**Date of  
determination** : **25 July 2024**

---

**DECISION**

---

## **Decision of the Tribunal**

The Tribunal grants the application for dispensation from statutory consultation in respect of the qualifying works.

### **The application**

1. The applicant, the London Borough of Lambeth, is the freeholder of 37-42 Kingscroft, Kings Avenue, London, SW4 8ED. The property is a purpose-built two storey low-rise block of 6 flats.
2. The application, dated 1 March 2024, seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“The Act”) dispensing with statutory consultation in respect of qualifying works. At the time of that application, those works had already been carried out.
3. Directions were issued by the Tribunal on 14 May 2024, which erroneously gave any objecting respondents until 5 May 2024 to respond. Accordingly, the Tribunal issued amended directions to correct this deadline to 5 June 2024 (the version provided in the applicant’s bundle being the unamended set of directions, which has no bearing on the Tribunal’s decision).
4. Amongst other things, the Tribunal’s directions provided that the applicant was to include in its bundle “copies of any replies from the Respondents/leaseholders and their evidence **OR** confirmation that there were no responses”. Neither any replies, nor confirmation that there were none was provided in the bundle; however, following a request for clarification from the Tribunal dated 15 July 2024 the applicant confirmed, in an email dated 19 July 2024, that no such replies had been received.
5. The Tribunal considered that a paper determination of the application was appropriate, the applicant indicated that they were content for this to happen in their application and no replies were received from any respondents. The Tribunal therefore determined the matter on the basis of the papers provided to it without a hearing.
6. The Tribunal did not inspect the subject property as it was not necessary to do so to determine the present application.

### **The Qualifying Works**

7. The applicant avers that squirrels were discovered in the property’s loft area, in which there were electrical cables, and that they had caused

damage in the loft. The works were therefore needed to make good the damage caused and prevent the return of the squirrels in future.

8. The works conducted are set out in detail both in the applicant's submissions and in the invoice provided by them from Fahey Roofing Ltd dated 1 February 2024 (who the Tribunal understands conducted the works). Those works required scaffolding, and included refixing tiles, guttering works and renewal of under-eave protection - alongside associated works such as the application of expanding foam to prevent the squirrels returning to the property.
9. The applicant has also provided an internal report dated 6 February 2024 from Jason Welch, a Community Works Surveyor. That report says it was provided following a "survey/investigation" by Derry Rynsaard – who is said to be a "Community Works Roofing Surveyor". Amongst other things, the report notes that "this has happened before", and outlines concerns that the squirrels "could chew through electrical cables causing a fire in the loft space". The works, in that report, are therefore said to be urgent due to a health and safety issue.
10. The applicant further avers that a temporary fix to allow for a full consultation was not practicable "due to urgent need to complete the repairs to obviate the risk of the squirrels' chewing electrical cables occasioning a house fire".
11. The invoice of 1 February 2024 from Fahey Roofing Ltd provides an estimate totalling £4,769.35 excluding VAT for the works.
12. No consultation was carried out, as the applicant avers that the works were urgent and the applicant had authorised them as soon as they became aware of the need for the works. However, the applicant sent to the leaseholders, on 1 March 2024, a detailed letter (an example of which the applicant has provided) setting out the works and the applicant's intention to make an application to this Tribunal for dispensation – even going so far as to provide an 'FAQ' document explaining, amongst other things, what an application for dispensation is, and how the leaseholders might object should they wish.
13. The Tribunal notes for completeness that the applicant's letter of 1 March 2024 refers to the works commencing within the next 30 days from then, however it would appear from the remainder of the application that the works were conducted in February 2024. Whilst this does appear therefore to be a discrepancy, it is of no import to the matter at hand whether the works were conducted in February or March 2024.

## Decision and Reasons

14. Section 20ZA(1) of the Act provides:

*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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

15. The applicant's case is that the works were required to make good damage caused by squirrels and prevent their re-entry to the property. The works are said to have been particularly urgent due to the risk of squirrels causing a fire by chewing through electrical cables in the loft.
16. As the applicant alluded to in their written submissions, including by reference to the Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Tribunal's principal focus in applications for dispensation is upon what prejudice might be caused to leaseholders by the landlord's failure to comply with the consultation requirements.
17. The Tribunal has not received submissions from any leaseholders or other interested parties objecting to the application or identifying any prejudice that might or has been suffered due to the lack of consultation; and the applicant has confirmed that they have not received any such objections either.
18. On the balance of evidence provided to the Tribunal, the Tribunal finds that it was appropriate to carry out the qualifying works without carrying out statutory consultation. As the applicant identifies, squirrel infestations in loft areas carry health and safety risks that require urgent attention, including the risk of fire from their chewing through electrical cables where present.
19. The Tribunal therefore considers, for the reasons given above, that it is reasonable to grant the application for dispensation from statutory consultation. No conditions on the grant of dispensation are appropriate and none is made.
20. This decision does not affect the Tribunal's jurisdiction upon an application to make a determination under section 27A of the Act in respect of the reasonable and payable costs of the works, should this be disputed by any leaseholder.

**Name:** Mr O Dowty MRICS

**Date:** 25 July 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 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).