



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

Case reference	:	LON/00BG/LDC/2024/0005
Property	:	Port East Apartments, 14 Hertsmere Road, London E14 4AF
Applicants	:	West India Quay (Freehold) Limited and/or Port East Apartments (Management) Limited
Representative	:	Emma Waller of LB Navana, Applicants' managing agents
Respondents	:	The residential leaseholders of the Property
Type of application	:	Dispensation from compliance with statutory consultation requirements
Tribunal member	:	Judge P Korn
Date of decision	:	9 July 2024

DECISION

Description of hearing

This has been a remote hearing on the papers. An oral hearing was not held because the Applicants confirmed that they 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 Applicants seek 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 fire panels and smoke heads.
3. The Property comprises a Grade 1 listed conversion consisting of 4 blocks with 76 flats and 12 commercial units.
4. In the application, the Applicant is stated to be Emma Waller, which is clearly incorrect as she is merely the agent. The landlord is stated in the application to be West India Quay (Freehold) Limited and the sample lease that has been provided shows Port East Apartments (Management) Limited as the management company under the lease. The matter is further complicated by the fact that both the landlord and the management company covenant to provide services under the lease, and therefore I have stated the Applicants to be West India Quay (Freehold) Limited and/or Port East Apartments (Management) Limited.

Applicants’ case

5. The Applicants’ case has not been put together with much care, and any future such application should be managed more carefully.
6. In the application it is stated that the fire panels and various smoke heads required replacement following a catastrophic failure of the fire alarm system. The replacement needed to take place urgently in order for the Property to have a fully functioning fire alarm.
7. On 28 May 2024 the Applicants’ managing agents wrote to leaseholders advising that a section 20ZA dispensation application had been made due to the nature of the remedial work needed. They stated that the fire alarm panel needed to be replaced because it was not securely syncing to the commercial units’ systems (thereby creating a fire safety risk), they were unable to source parts to maintain the system due to parts being obsolete, the alarm system had multiple faults that they were unable to disable, and that all the above posed a major fire risk to the development. It was therefore necessary to undertake the work with

utmost urgency to protect the residents, visitors and commercial owners and to ensure that the building remained in line with building safety regulations. The letter went on to state that a copy of the section 20ZA application was available on the Port East Apartments website or as a hard copy, and the letter invited comments regarding the application.

Responses from the Respondents

8. None of the Respondents has written to the tribunal raising any objections to the dispensation application, and the Applicants state that no feedback has been received from any of the Respondents.

The relevant legal provisions

9. 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”*.
10. 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

11. The Applicants have explained why the works were considered urgent and why, therefore, they did not go through a statutory consultation process before carrying out the works.
12. 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.
13. 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. The application is somewhat light on detail and the tribunal has had to chase the Applicants to comply properly with the its directions, but nevertheless I accept on the basis of the uncontested evidence before me that the carrying out of the works was urgent for the reasons given.

14. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. In this case the Applicants have explained why the works were urgent and no leaseholders have raised any objections or challenged the Applicants' factual evidence. I therefore consider that it is reasonable to dispense with the consultation requirements.
15. 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.
16. Accordingly, I grant unconditional dispensation from compliance with the consultation requirements.
17. **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

18. There have been no cost applications.

Name: Judge P Korn

Date: 9 July 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.