



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

Case reference	:	LON/00AX/LDC/2024/0184
Property	:	Britannic House, 230 Burlington Road, New Malden, Surrey KT3 6BB
Applicant	:	Wintertime Developments
Representative	:	Jeff Spencer of White Dome Property Limited, Applicant's 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	:	1 October 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 works needed to remedy damage caused by water ingress and to prevent future water ingress.
3. The Property is a block of 45 flats with an underground car park.

Applicant’s case

4. The Applicant states that it has had a problem with water ingress at the front of the building into the underground car park and that the water ingress has started to corrode a steel joist in the building and is getting progressively worse. The Applicant has previously engaged an engineer and several contractors to review the situation, and it has now taken the decision on the advice of its professional team that further and more intrusive works are necessary to ensure that the structure of the building is not compromised further. This will involve breaking up the stone slab at the front to try and measure the thickness of the joist so as to ascertain its integrity. Further works will be necessary, but it will not be possible to ascertain exactly what is required until the exploratory works are complete.
5. The Applicant’s managing agents have held a Zoom call and exchanged emails with leaseholders. The Applicant was first aware of the issue last year and has since then been working on a process to deal with the issue. Initially the Applicant’s managing agents took emergency measures at the time of exposing the steel and had contractors lined up to deal with the issue without the need for a section 20 notice, but they were let down by a contractor and then sought further advice and established that more extensive works were needed.
6. Given that the issue affects the structure and that the Applicant is concerned that further corrosion will compromise the integrity of the building, it is considered vital that the exploratory works take place as soon as possible.

Responses from the Respondents

7. None of the Respondents has written to the tribunal raising any objections to the dispensation application, and the Applicant states that no objections have been received from any of the Respondents.

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 are considered urgent and why, therefore, it seeks dispensation from compliance with the statutory consultation process.
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. The application has been properly explained and is supported by relevant evidence contained in the hearing bundle, and I accept on the basis of the uncontested evidence before me that the carrying out of the works was urgent for the reasons given.
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: 1 October 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.