



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

Case reference : **LON/00AG/LDC/2024/0189**

HMCTS code : **P: PAPERREMOTE**

Property : **77 Onslow Gardens, Kensington,
London, SW7 3QD**

Applicant : **The Wellcome Trust Limited**

Representative : **Ringley Law
Reference: 30031280**

Respondent : **The leaseholders of 77 Onslow Gardens,
Kensington, London, SW7 3QD**

Type of application : **Application to dispense with statutory
consultation requirements under
section 20ZA of the Landlord and
Tenant Act 1985**

Tribunal members : **Judge Tueje
Mr M Cairns MCIEH**

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

Date of decision : **28th October 2024**

DECISION

Description of hearing

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of the remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

Decision of the Tribunal

In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.

- (1) The Tribunal grants unconditional dispensation pursuant to section 20ZA in respect pest control treatments required due to the presence of rats at 77 Onslow Gardens, Kensington, London, SW7 3QD (the “Property”).
- (2) These works cost £2,706.00 including VAT.
- (3) This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or cost of the subject works.

The Application

1. This Application under section 20ZA, is dated 25th June 2024, and seeks dispensation from the statutory consultation requirements in respect of the above-mentioned treatments required at the Property.

Background

2. The Applicant is the freeholder of the Property, which is a building comprising six self-contained residential flats. The Respondents are the leasehold owners of the flats within the Property.
3. The Property is managed by Ringley Limited, who are the Applicant’s representative.
4. The Application relates to a series of treatment required due to the present of pests, namely rats, in the basement and bin store area of the Property, which the Applicant’s representatives state, amount to a health and safety issue.
5. The Tribunal was provided with a 58-page electronic bundle including:
 - 5.1 The application form requesting dispensation;
 - 5.2 The Tribunal’s directions order dated 6th August 2024 requiring, amongst other things, that the Applicant does the following;
 - (i) Send a copy of the directions order to the Respondents;
 - (ii) Send a copy of the Application to the Respondents; and
 - (iii) Display a copy of both of the above documents in a prominent place in the common parts of the Property.
 - 5.3 A witness statement from Ella Ashton dated 16th August 2024;

- 5.4 An e-mail from the Applicant sent to the Tribunal on 21st August 2024 stating it had complied with paragraphs 5.2(i) to 5.2(iii) of the Tribunal's directions order;
- 5.5 A quotation from Quick Kill Pest Control Services dated 4th June 2024 for pest control treatments amounting to £2,076.00 including VAT;
- 5.6 A witness statement from Anastacia Theophanous dated 4th October 2024 stating the Respondent received no response to the Application; and
- 5.7 A sample lease.
6. The grounds for the Application, as stated in the form, was as follows (see section 10):
- The pest control treatment is currently being carried out in the bin store and basement areas. The first treatment has been administered on 11th June 2024. There are four more treatments that need to take place which will be completed over a period of eight weeks (this time frame may be extended if more treatment is needed).*
7. The grounds continue:
- There has been limited consultation due to the urgency of the works. The Freeholder is in agreement that the works need to be done as soon as possible.*
8. As to whether the Application is urgent, the form also states (see section 10 of the Application):
- The works are urgently required due to the pests (rats) in the bin store and the basement. This is a growing health and safety concern to the building.*
9. As stated, it appears from the Applicant's e-mail sent on 21st August 2024 (see paragraph 5.4 above), that the leaseholders are aware of the Application, and that the Tribunal's directions provide an opportunity for them to raise any objections to the Application.
10. It also seems from Ms Theophanous's statement dated 4th October 2024 that none of the leaseholders have raised any objections to the Application.

The Legal Framework

11. So far as is relevant, section 20 states:

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in

accordance with subsections (6) or (7) (or both) unless the consultation have been either-

- (a) *Complied with in relation to the works or agreement, or*
- (b) *Except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*

(2) *In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*

(3) *This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*

12. Section 20ZA(1) continues:

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 agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

The Determination

13. In making its decision, the Tribunal took into account the information provided by the Applicant in the bundle, as set out above.

14. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

14.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.

14.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord’s failure to comply with the requirements under section 20.

14.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.

14.4 The Tribunal’s main focus on such applications is what prejudice, if any, have leaseholders suffered.

- 14.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.
- 14.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.
- 14.7 If appropriate, the Tribunal may grant conditional dispensation.

The Tribunal's Approach to the Evidence

15. The Tribunal reached its decision after considering the documents in the bundle, and taking into account its assessment of that evidence.
16. This determination does not refer to every matter raised, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was relevant to a specific issue, it was considered by the Tribunal.

The Tribunal's Decision

17. The Tribunal grants dispensation pursuant to section 20ZA in respect of the series of pest control treatments as set out in the quotation from Quick Kill Pest Control Services dated 4th June 2024 amounting to £2,076.00 including VAT.

The Tribunal's Reasons

18. The Tribunal has had regard to the nature of the treatments and finds these were necessary. The Application and supporting evidence in Ms Ashton's witness statement dated 16th August 2024 indicate a risk to the health and safety of the residents of the Property due to the presence of rats. Therefore, the Tribunal considers the treatments were necessary and urgent, and this is our primary reason for granting dispensation.
19. Additionally, the Tribunal takes into account that leaseholders were notified about the Application, and by paragraph 2 of the directions order, leaseholders were afforded an opportunity to object to this application, yet they raised no objections. Therefore, the Tribunal proceeds on the basis that the leaseholders have no objections to the application, and that there has been no relevant prejudice to the leaseholders, because it's likely they would have objected to the application if they considered they would be prejudiced.
20. We have balanced the requirement to consult leaseholders against the need to carry out the treatments promptly. On balance, we have concluded that the need for the treatments to avoid the risks posed by the presence of rats in the Property justifies granting dispensation.
21. For the reasons stated at paragraphs 18 to 20 above, the Tribunal is satisfied that it is appropriate to grant dispensation from the consultation

requirements bearing in mind the Supreme Court decision in *Daejan Investments Limited v Benson and others [2013] UKSC 14*.

Name: Judge Tueje

Date: 28th October 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).