



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

Case reference : **LON/00AW/LDC/2020/0172P**

Property : **16A Brechin Place, London SW7
4QA**

Applicant : **16 Brechin Place Management
Company Limited**

Representative : **Michael Dyer of HML Group**

Respondents : **Mr Hardick, Lady Stonor and Mr
Cheysson as the three leaseholders
of the Property**

Type of application : **Dispensation from compliance with
statutory consultation
requirements**

Tribunal member : **Judge P Korn**

Date of decision : **25th March 2021**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. 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 those of the consultation requirements not complied with by the Applicant 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 comprise repairs to a leaking roof. The work was due to commence on 26th October 2020, and this is therefore a request for retrospective dispensation.
3. Although the application describes Michael Dyer of HML Group as the applicant, it also states that 16 Brechin Place Management Company Limited is the landlord. I note from the sample lease provided that the leases are simple two-party leases between a landlord and a tenant, and it therefore follows that the proper Applicant is (and will be treated as) 16 Brechin Place Management Company Limited.
4. The Property comprises a Victorian house converted into 3 flats. The Respondents are the long leaseholders of the flats.

Applicant’s case

5. The concerns about the leaking roof were exacerbated by the poor weather at the time, and it was therefore felt to be urgent to repair the roof with the minimum of delay. All three leaseholders were consulted, albeit informally, and they were all in agreement that the work should go ahead without first going through a formal consultation process.
6. The Applicant has provided a schedule of works and quotes from two contractors.

Responses from the Respondents

7. There have been no objections from the Respondents to the application. On the contrary, at least two of the Respondents (Mr Hardick and Mr Cheysson) have provided the Applicant with signed – albeit undated – letters confirming that they are content for the work to go ahead without the Applicant going through the statutory consultation procedure. The Applicant states that Lady Stonor has also signed such

a letter – this may well be true, but it is difficult to tell from the version of the other letter supplied whether it has indeed been signed by or on behalf of Lady Stonor or indeed signed at all.

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. Whilst the Applicant has clearly kept the Respondents informed in relation to this matter, I note that it has not served any formal notices as required by the Service Charges (Consultation Requirements) (England) Regulations 2003 (**“the Regulations”**). It is arguable that at the very least the Applicant could have served a stage 1 notice as required by the Regulations.
11. However, as is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key consideration when considering an application for dispensation is whether the leaseholders have suffered any real prejudice as a result of the failure to comply with the consultation requirements.
12. In this case, there is some evidence to indicate that the works were urgent and the point has not been contradicted by or on behalf of any of the Respondents. Also, and importantly, whilst there has been no formal compliance, none of the leaseholders has objected to the application and at least two out of the three leaseholders (and possibly all of them) actively support it.
13. None of the Respondents has suggested that there has been any prejudice to leaseholders as a result of the failure to comply with the statutory consultation requirements.
14. I would just note, though, that the information provided by the Applicant in support of the application is quite sparse. It is not even clear from the documentation provided which contractor was chosen and why, and the copy lease supplied is incomplete.

15. Nevertheless, the tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements, and on the facts of this case in the light of the points noted above I consider that it is reasonable to dispense with them.
16. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even where 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 prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
17. Accordingly, I grant unconditional dispensation from compliance with those of the consultation requirements not complied with by the Applicant.
18. For the avoidance of doubt, 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

19. There have been no cost applications.

Name: Judge P Korn

Date: 25th March 2021

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.