



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

Case reference : **LON/00BJ/LDC/2021/0043P**

Property : **14-16 Prince of Wales Drive,
London SW11 4SF**

Applicant : **14-16 POW RTM Company Limited**

Representative : **Kempton Carr Croft**

Respondents : **Thomas Boyd, Patrick Colville and
Sara Jensen**

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

Tribunal member : **Judge P Korn
Ms F Macleod MCIEH**

Date of decision : **19th April 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 we have been referred are in an electronic bundle, the contents of which we 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 works of repair to the roof, including the erection of scaffolding. It appears that the works have now been carried out in full and that therefore this is a request for retrospective dispensation.
3. The Property is a Victorian/Edwardian building converted into 3 flats. The Respondents are the long leaseholders of the flats.

Applicant’s case

4. The Applicant served a notice of intention on leaseholders on 9th February 2021. It is seeking dispensation from compliance with the remainder of the consultation requirements as the flat roof has failed, causing water ingress and damage to the building and to habitable space on the third floor.
5. The works had not been started as at the date of the application but they were anticipated to have begun as at the date of the tribunal’s determination.
6. The Applicant has provided a copy of an estimate for the cost of scaffolding, a photograph of the scaffolding and an estimate for the flat roof replacement. It has also provided an audio recording of its AGM on 6th March 2021 at which shareholders agreed with the costings.
7. In its application the Applicant states that its directors are/were jointly in the process of arranging quotes.

Responses from the Respondents

8. There have been no objections from any of the Respondents to the application, and the shareholders of the Applicant company appear to be in positive agreement with the Applicant’s approach to this matter.

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. Whilst the application states that the Applicant was, at the time of the application, in the process of arranging quotes, there is only evidence of one quote before us. However, the Applicant did send out notices of intention and therefore it was open to the Respondents to nominate alternative contractors at that stage.
12. 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.
13. In this case, there is some evidence to indicate that the works were urgent, in the sense that delay could have led to further damage, and the Applicant’s submissions on this point have not been contradicted by or on behalf of any of the Respondents. Also, and importantly, whilst the Applicant has not fully complied with the statutory consultation requirements, none of the leaseholders has objected to the application.
14. In addition, 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.
15. 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 we 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, we 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: 19th April 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.