



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

Case reference : **LON/00BK/LDC/2017/0089**

Property : **The Water Gardens, Burwood
Place, London W2 2DB**

Applicant : **The Church Commissioners for
England**

Respondents : **The leaseholders of the Property as
per the application**

Type of application : **To dispense with the requirement
to consult leaseholders about
major works**

Tribunal members : **Judge P Korn
Mr D Jagger MRICS**

Date of decision : **18th September 2017**

DECISION

Decision of the tribunal

- (1) The tribunal dispenses with the consultation requirements in respect of the qualifying works which are the subject of this application to the extent that they have not already been complied with.
- (2) No cost applications have been made.

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, to the extent that those requirements have not already been complied with.
2. The development is a purpose built set of four blocks of residential flats comprising 249 units in total.
3. The qualifying works which are the subject of this application are stated by the Applicant to arise out of problems with the water supply and water pressure. The works comprise the replacement of the water pumps and installation of controls.

Paper determination

4. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. In its directions the tribunal allocated the case to the paper track (i.e. without an oral hearing) but noted that any party had the right to request an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant's case

5. The Applicant states that during 2016 a number of residents reported issues with water supply or water pressure. The company that maintains the water pumps attended the Property and the issues were resolved. However, due to the age of the pumps the pump maintenance company advised that further issues might be encountered in the future, and the Applicant therefore agreed to proceed with replacing all water pumps and installation of controls. It issued a Notice of Intention to all leaseholders on 3rd March 2017.
6. Design consultants were appointed on 12th April 2017 to oversee the project, and a report outlining their recommendations was provided to the Applicant's managing agents on 8th May 2017. On 24th May 2017 a

specification of works was produced and the design consultants sent copies of the specification to three contractors on 7th June 2017 by way of invitation to tender. Tenders were received by the Applicant on 30th June 2017. There were large differences in price and the design consultants therefore approached the contractor with the lowest price (PHD) to confirm the details of its tender. Following this, on 20th July 2017 the design consultants recommended instructing PHD.

7. On 21st July 2017 the Applicant's solicitors were instructed to draft the Notice of Estimates. However, since 6th June 2017 the Applicant had been receiving a large number of reports from residents that they were without water. The problems were resolved, but on the weekend of 21st to 23rd July 2017 residents in the South Block were without water and the contractor was unable to get the pumps working. Both the design consultants and PHD advised that the problems with the water supply would continue until the pumps were replaced.
8. As some residents were without water it was agreed that it was necessary to replace the water pumps as a matter of urgency. PHD was instructed to proceed and a letter was sent to all leaseholders explaining that PHD had been instructed and that the Applicant would be applying for retrospective dispensation from the obligation fully to comply with the section 20 consultation requirements. Given the level of complaints regarding the lack of water supply, the Applicant felt that the works could not be delayed.

Responses from the Respondents

9. Two of the Respondents have written to the tribunal in support of the application for dispensation, and none of the other Respondents has opposed the application or made any other representations.

The relevant legal provisions

10. 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"*.
11. 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 decision

12. The tribunal notes the circumstances in which the application for dispensation has been made. Based on the evidence supplied by the Applicant, which has not been contradicted by any of the Respondents, the tribunal concludes that there was a significant degree of urgency in relation to the carrying out of these works at the point at which the Applicant ceased to comply with the formal consultation requirements.
13. In particular, the evidence indicates that the level of urgency increased after stage 1 of the consultation process had been carried out in that (a) several residents were without water and (b) the expert advice received by the Applicant was that the problems would continue until the pumps were replaced.
14. None of the Respondents has raised any concerns with the tribunal nor opposed the application for dispensation, and two of them have positively supported the application. The Applicant did go through the first stage of consultation and has taken reasonable steps to keep leaseholders informed.
15. In our view the lack of water was a sufficiently serious issue to justify the Applicant's decision to proceed with the works without complying with all of the formal consultation requirements, particularly as the only representations received from the Respondents are in support of the application.
16. There is a residual concern that this is the fourth application made by the Applicant seeking dispensation. However, each case needs to be looked at on its own merits, and on the facts of this case the urgency of the situation coupled with the lack of objections from leaseholders justifies the Applicant's actions.
17. Therefore, we are satisfied in this case that it is reasonable to dispense with the formal consultation requirements in respect of the qualifying works which are the subject of this application to the extent that they have not already been complied with.
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.

Name: Judge P Korn

Date: 18th September 2017

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.