FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/LDC/2022/0069P**
Property	**:**	**1-15 Dunstan House, 83 Malpas Road, London SE4 1DW**
Applicant	**:**	**London Borough of Lewisham**
Representative	**:**	**Sandra Simpson of Pinnacle Group Ltd, the Applicant's managing agents**
Respondents	**:**	**The leaseholders of the Property**
Type of application	**:**	**Dispensation from compliance with statutory consultation requirements**
Tribunal member	**:**	**Judge P Korn**
Date of decision	**:**	**11 July 2022**

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 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 involve a partial replacement of the flat roof. In particular, the works – which have been completed – included the erection of full scaffolding, stripping back existing roof tiles, re-lining valley gutters, re-felting and battening, plus new flashings and pointing.

3. The Property is a purpose-built block of flats, with a flat roof.

Applicant's case

4. The Applicant's managing agents state that dispensation is sought for work that was carried out on the roof prior to a section 20 notice being served on 11 February 2022. The work was carried out because the roof was leaking and the tenant in Flat 15 was suffering water ingress. That tenant also made a disrepair claim against the Applicant's maintenance company, Rydon Maintenance. The leaseholder of Flat 6 was also suffering water ingress. The roof had previously been patch-repaired, but those repairs did not work and therefore a whole section of roof had to be replaced.

5. The hearing bundle includes details of estimated costs, emails between the Applicant's managing agents and the maintenance company, documents from the scaffolding company, email correspondence with Mr Bensaker (see below), a list of the works carried out on the roof since 2014, and correspondence relating to the disrepair claim for Flat 15.

Responses from the Respondents

6. The hearing bundle contains an objection to the application from Ms S Trustman and Mr M Bensaker, joint leaseholders of Flat 6 ("**the Objecting Respondents**"). The Objecting Respondents also appeared initially to have requested an oral hearing, although on being contacted by the case officer Mr Bensaker said that he had ticked the relevant box in error and that he was content for the application to be decided on the papers alone without an oral hearing.

7. The Objecting Respondents state in their written submissions that they first reported issues (about water penetration) in February 2019 but that the necessary repairs were not completed until February 2022. In February 2019 and on several subsequent occasions they contacted Customer Service to complain that the gutter above the entrance door was blocked with debris. The blocked gutters caused water to overflow, which created a 'waterfall' in front of the entrance door, puddles on the entrance balcony and mould on the external wall. This also led to many hazard risks. The gutter was unblocked many times but this proved only to be a temporary fix. In August 2021 the problem worsened, with water leaking from the kitchen ceiling. The Objecting Respondents ending up making a complaint to the Independent Adjudicator, and the complaint was upheld.

8. There are no objections from any of the other Respondents.

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. The first thing to mention is that the electronic bundle is limited in scope and is difficult to navigate. Whilst I appreciate that it is not always easy to assemble this type of bundle of documents, the statement of case is extremely brief and contains no proper analysis or even acknowledgement of the issues that are relevant to an application for dispensation. There is also no statement commenting on the objections raised by the Objecting Respondents. As for the section containing copy correspondence, there is a large amount of duplication and there is no explanation as to the relevance of any particular elements of that correspondence to the issue before the tribunal.

12. Furthermore, there is no acknowledgement in the statement of case of the fact that a section notice was served on leaseholders **after** completion of the works which are the subject of this application. On the face of it, serving a section 20 notice after completing the works to which it relates is not only pointless but also potentially confusing to leaseholders. It is pointless because it seeks the leaseholders' views on

how to do something that has already been done. It is potentially confusing as it could give the impression that the landlord is not in fact in breach of the section 20 requirements, thereby possibly prejudicing leaseholders who might be minded to object to the breach. In practice it seems that the section 20 notice relates to other works as well, but the Applicant has not explained this in its statement. As regards the status of a section 20 notice which partly covers works which have already been done and partly covers works which are yet to be done, I make no comment on this point as this is not the issue before me in this application.

13. As for the submissions made by the Objecting Respondents, these objections may be valid (I make no comment either way on this point) but they are not relevant to the issue before the tribunal. The Objecting Respondents are essentially complaining that the Applicant did not get on with the work much sooner, but the issue before the tribunal is whether the Applicant should have waited to complete a formal statutory consultation process before commencing the works. Clearly, if the Applicant had delayed the works in order to engage in a full consultation process the works would have been completed even later than they were.

14. 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.

15. In this case, only the Objecting Respondents have expressed objections and those objections do not demonstrate that the Objecting Respondents, or any other leaseholders, suffered prejudice as a result of the Applicant's failure to go through the statutory consultation process. On the contrary, based on the written submissions that have been made it was in the Objecting Respondents' **interests** for the statutory consultation process to be circumvented so that the works which they were pressing the Applicant to carry out could be carried out without further delay.

16. As to why the Applicant did not go through the statutory consultation process, the Applicant has referred to the problems of water ingress in Flats 6 and 15 and to the claim made by the leaseholder of Flat 15. Whilst it could well be legitimate to ask why the Applicant did not carry out more extensive works at an earlier stage, the key question relevant to the issue of dispensation is whether the failure to go through the statutory consultation process caused any prejudice to any of the leaseholders.

17. The objections raised by the Objecting Respondents are not relevant to dispensation and no other Respondent has expressed any objections.

In addition, there is no other evidence before me that the leaseholders were in practice prejudiced by the failure to consult and there is some evidence – which is not contested – that the works needed to be completed before any further damage from water ingress occurred.

18. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. Whilst I have reservations about the way in which the Applicant has presented its case, on the basis of the evidence before me I consider that it is reasonable to dispense with the consultation requirements for the reasons given above.

19. As is 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. This might occur where a tribunal agrees that prejudice has been suffered but does not feel that the situation warrants a complete refusal to grant dispensation. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case, nor have any conditions been suggested.

20. Accordingly, I grant unconditional dispensation from compliance with the consultation requirements.

21. 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**. In particular, and without expressing any view on the merits of their arguments, the Objecting Respondents should note that there might exist an alternative basis for challenging the cost of the works and therefore they may wish to take independent advice on this point.

Costs

22. There have been no cost applications.

Name: Judge P Korn **Date:** 11 July 2022

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.