



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

Case reference : **LON/00BG/LDC/2020/0231**

HMCTS code (paper, video, audio): : **P: CVPREMOTE**

Property : **Ink Court, 419 Wick Lane, London E3 2PW**

Applicant : **Wick Lane Wharf Management Ltd**

Representative :

Respondents : **The leaseholders named on the application**

Representative :

Type of application : **For the dispensation of some of the consultation requirements under s.20 Landlord and Tenant Act 1985**

Tribunal members : **Judge Simon Brilliant**

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

Date of hearing : **24 February 2021**
(Paper Hearing)

Date of decision : **24 February 2021**

DECISION

This decision is corrected pursuant to rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on 04 March 2021.

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by s.20 of the Landlord and Tenant Act 1985 ("the Act") which have not been complied with are to be dispensed with.

Covid-19 pandemic: description of hearing

This has been a paper hearing which has been not objected to by the parties. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in a bundle totalling 463 pages.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Act for the dispensation of all or any of the consultation requirements provided for by s.20 of the Act. The application was dated ~~10 February~~ 26 November 2020.
2. Directions of the Tribunal were issued on 15 December 2020, 21 December 2020 and 12 January 2021.
3. The Applicant's evidence consisted of a witness statement from Ms Alexandra Gee, the Applicant's solicitor dated 12 February 2021.
4. Ms Gee confirms in her evidence that none of the considerable number of Respondents has raised any objection to this application.

The background

5. The premises consist of a seven story purpose-built residential building of 112 residential units and three commercial units (the latter not been part of this application).

The basis of the application

6. The Applicant seeks dispensation from the statutory consultation requirements in respect of the following matters:

(a) The installation of a fire alarm system with automatic heat detection intended to remove the need of a waking watch currently in place at a cost of £11,500 per month. The works have been completed.

(b) The replacement of the five boilers at the property, which are no longer working and had been temporarily replaced. The cost of this work is said to be about £40,000. The works ~~are ongoing~~ have been completed.

(c) The installation of fire stopping measures, to be taken in risers. The works ~~have been completed~~ are still ongoing.

7. Although there has been contact with the leaseholders, in none of these cases has any consultation under s.20 been undertaken. The application is said to be urgent because the fire prevention works are necessary for the safety of the residents, and the boiler replacement for their well-being. The cost of the waking watch and the temporary boilers is placing a financial burden on the

leaseholders.

8. In the notice of application, which is dated 26 November 2020, the grounds for seeking dispensation are as follows:

1. The building has external cladding that no longer meets guidelines as set out in a Fire Engineering Assessment dated 28 July 2020 “the Assessment”. The Assessment also identifies remedial work required to the balconies to mitigate the risk of fire spreading.

2. The recommended interim measures include a waking watch or a fire alarm system with automatic heat detection. This has been agreed in principle with the London Fire Brigade. A waking watch has been put in place at the cost of £11,500.00 per month and should remain in place until an adequate interim measure has been implemented.

3. The qualifying works are the installation of the fire alarm system with automatic heat detection. In light of the urgency of these works, instructions have been given to Middlesex Fire to carry out the works which have now begun.

4. On 10 September 2020 London Fire Brigade identified a deficiency in the fire stopping in riser cupboards.

5. As at 2 October 2020, two of the five boilers serving the property were not working. On 2 October 2020, it was discovered that the three remaining operational boilers had broken down simultaneously, so all five boilers were now broken. Temporary boilers were installed in the car park. Temporary boilers cost £11,000.00 to install and continue to incur a cost of £1,538.00 per week for hire and fuel. Four of the five boilers were found to be no longer fit for purpose due to a failure of various major components. Additionally, other sections of the installation no longer comply with the regulations and need replacing. The cost of replacing the boilers was estimated at about £40,000.00.

9. As far as the urgency of the application is concerned, it is explained that due to concerns about the health and safety of the occupants of the building, London Fire Brigade recommended that action was to be taken by 11 December 2020.

10. It is also explained that the boilers are essential for the provision of hot water. The temporary boilers are only intended to be for emergency use. If a four-month consultation period were to take place, this would result in an extra cost of £20,076.00. To reduce this cost works needs to be carried out as soon as possible.

11. Because of the urgency of these works, no s.20 consultation process has been carried out.

12. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.** As stated above, none of the Respondents has objected to the application.

13. The Applicant was directed by 23 December 2020 to serve the relevant documents on each of the Respondents, and to display a copy of them in the common parts of the property. Any Respondents or sublessees who opposed the application were to inform the Tribunal by 15 January 2021.

The Applicant's case: evidence

14. In her witness statement Ms Gee deals with the fire alarm system in paragraphs 13 to 18. She says that as a result of the Assessment finding that external cladding did not meet the necessary fire safety guidelines, there needed to be put in place interim measures of a waking watch or a fire alarm system with automatic heat detection. A waking watch was put in place from 14 August 2020 at a cost of £11,500.00 per month. A fire alarm system would replace this.

15. Four quotations were obtained, and the contract given to the cheapest one (£105,244.00 plus VAT). The works were completed on 22 December 2020. The waking watch ceased on 23 December 2020. The Applicant could not delay instructing a contractor because of the risk. The project was discussed with the Respondents at meetings between 8 July 2020 and 20 August 2020. There has been no prejudice to the Respondents.

16. In her witness statement Ms Gee deals with the fire stopping in paragraphs 19 to 25. In July 2020 London Fire Commissioner carried out an inspection. It was found that the fire stopping in common areas raised serious health and safety concerns. Five quotations for a fire alarm system were obtained, and the contract given to the cheaper of the two provided by specialists (£35,283.50 plus VAT). Again, the Applicant could not delay instructing a contractor because of the risk. The works commenced on 18 January 2021, but have not been completed yet because it transpired that more work required doing at an additional cost of £6,101.52 plus VAT. Again, there has been no prejudice to the Respondent.

17. In her witness statement Ms Gee deals with the boilers in paragraphs 26 to 35th. Following the breakdown of the remaining three boilers on 2 October 2020, two quotations were obtained for replacing all five boilers. Two quotations were obtained, and the lower one accepted (£37,357.00 plus VAT). Again, there has been no prejudice to the Respondent.

18. Ms Gee exhibited 195 pages of the technical documents supporting her case. Given that this application is not opposed, it is not necessary for me to give them detailed consideration in this decision. For the sake of the record, these documents are to be found between pages 86 and 281 in the electronic bundle.

The law

19. Dispensation is dealt with by s.20ZA of the Act which provides:-

"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements".

20. *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854, is the leading case dealing with retrospective dispensation. It confirmed that

when considering an application under section 20ZA, the Tribunal should focus on the extent, if any, to which the leaseholders were prejudiced by the failure to comply with the consultation requirements: [44], per Lord Neuberger. A serious breach of the requirements by the lessor is not a cause for refusal of dispensation [46]. Furthermore, the section is not concerned with public law issues or public duties, so there is no justification for treating consultation or transparency as appropriate ends in themselves: [52].

21. The factual burden of identifying some relevant prejudice that they would or might have suffered is on the lessees: [67]. In particular, the lessees need to demonstrate their points would have been likely to have resulted in a cost reduction or other advantage. Lord Neuberger said:

“...if the tenants show that, because of the landlord’s non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the LVT [now the FTT] would be likely to proceed on the assumption that the point would have been accepted by the landlord”.

22. There are several cases at first instance in the Tribunal following *Daejan*, concerning the issue of installation of fire alarm systems, often in the place of waking watches.

23. In Vineyard Heights, 30 Mortlake High Street, London SW14¹, the Tribunal at [18a] considered it relevant that (a) the proposed temporary alarm system was likely to be more effective than the waking watch, (b) the LFB would not require a waking watch if the proposed works were executed, and (c) that carrying out the works would be likely to result in a very significant financial saving for the lessees.

24. In Hutchings Wharf, 1 Hutchings Street, London E14 8JY², the Tribunal at [14-15] considered it relevant that there were defective fire alarm systems which should be replaced.

25. In Flats 1-7 and The Garden Flat 10, Dunorlan, 2 Park Road, Harrogate HG2 9AZ³, the Tribunal at [11] considered it relevant that the Applicant had provided two written quotations for the supply and installation of a wireless fire alarm system.

26. In Land at St Georges Close, Sheffield S3 7AN⁴, the Tribunal considered it relevant to note that (a) the installation of a fire alarm system would remove the need to continue with a waking watch [11.5], (b) reserve fund monies had been used to pay for the works [11.7], (c) there had been informal engagement with residents [11.9] and [15.2], and (d) an alternative quote was obtained by the lessor for the works (albeit after the event) [12.2].

27. In Saffron Heights, 28 Saffron Hill, London EC1N 8FA⁵, the Tribunal granted dispensation where the s.20 notice was served on 24 July 2019, only

¹ LON/00BD/LDC/2019/0110

² LON/00BG/LDC/2019/0126

³ MAN/36UD/LDC/2019/0006

⁴ MAN/OOCG/LDC/2018/0019 & 003

⁵ LON/00AG/LDC/2019/0120

two days before the installation of fire alarms and sounders were undertaken on 26 July 2019. It was considered it would be unreasonable to delay the works whilst consultation was undertaken, as it would have required long term but temporary placement of waking watch officers [10].

28. In The Cube, 2 Advent Way, Manchester M4 7LH⁶, the Tribunal at [24] stated its experience was that the costs of a waking watch would be significantly more than installing the proposed automated fire detection and alarm system, and went on to consider that as a factor in favour of dispensation [25].

29. In Century House, 245 Streatham High Road, London SW16 1ER⁷, despite opposition from lessees, the Tribunal considered it relevant that (a) the works would alleviate the cost of waking watches [35], (b) the works were for the benefit of the parties [36-37], (c) there would not have been a significant saving in the cost of the works if the statutory consultation had been carried out [39], and (d) there was an attempt to achieve best value by getting tenders from two contractors [40].

Discussion

30. Applying the above law to the unchallenged facts set out above, I have no hesitation whatsoever in granting the dispensation as ask for.

31. Finally, it is again emphasised that the Tribunal's determination is limited to this application for dispensation of consultation requirements under section 20ZA of the Act.

Name: Simon Brilliant

Date: 24 February 2021

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.

⁶ [MAN/00BN/LDC/2018/0005](#)

⁷ [LON/00AY/LDC/2017/0122](#)

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).