



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

Case reference : **LON/00AF/LDC/2021/0301P**

Property : **Apartments 1-8 Cudham Hall,
Cudham Lane, South Cudham,
Sevenoaks, Kent TN14 7QB**

Applicant : **Purelake Investments Limited**

Representative : **Sarah Morris of Acorn Estate
Management**

Respondents : **The leaseholders of the Property**

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

Tribunal member : **Judge P Korn**

Date of decision : **30 March 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 relate to window repairs to Apartments 5 and 6.
3. The Property is a listed converted residential block comprising 8 apartments.

Applicant’s case

4. The Applicant states that it had previously completed cyclical decorations on the Property but that the contractors were unable to paint the top floor apartments (Apartments 5 and 6) as it was reported that all of the window frames were in disrepair and needed replacing or repairing.
5. The Applicant’s managing agents explained to the leaseholders of Apartments 5 and 6 that as the cost of the window replacement/repair works was above the consultation threshold, the Applicant would need to go through the section 20 consultation process. The leaseholder of Apartment 5 was not prepared to wait, as this would mean another winter with failing windows, and therefore proceeded with the necessary works, seemingly on the basis that the other leaseholders’ share of the cost would later be reimbursed to the leaseholder of Apartment 5 through the service charge.
6. In relation to Apartment 6, upon further investigation it became apparent that the windows had become a potential health and safety

hazard. In particular, one of the window-panes was so loose that there was a risk that it would fall from the frame and onto passers-by. The repairs to the windows for Apartment 6 were in the process of being completed when the Applicant made its application for dispensation.

7. Two quotes were obtained in respect of the Apartment 6 windows and the cheaper quote was accepted. Dispensation is sought in respect of the failure to go through the statutory consultation process in respect of the window repairs for both Apartment 5 and Apartment 6.

Responses from the Respondents

8. The Applicant states that there have been no submissions from the Respondents objecting to the application.

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. I note that aside from obtaining two quotes in relation to Apartment 6, the Applicant appears not to have complied with any of the statutory consultation requirements. In addition, whilst there is evidence to indicate that the works to Apartment 6 were urgent, the position is less clear in relation to Apartment 5. I note that the leaseholder of Apartment 5 did not want to go into the winter with defective windows, which is perfectly understandable, but there is at least a question as to whether this by itself is sufficient justification for bypassing the statutory consultation process which is there to protect other leaseholders.
12. However, 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 real prejudice as a result of the failure to comply with the consultation requirements.

13. In this case, none of the Respondents has expressed any objections in relation to the failure to go through the statutory consultation process, and there is no evidence before me that the other leaseholders were in practice prejudiced by the failure to consult. Furthermore, the works to Apartment 6 were urgent and there is some reason to believe either that the works to Apartment 5 were also urgent or at least that there were sound reasons for proceeding quickly with those works without waiting for the completion of the statutory consultation process.
14. 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 – including the lack of objections on the part of the Respondents, the urgency in relation to Apartment 6 and the desirability of proceeding quickly in relation to Apartment 5 – I consider that it is reasonable to dispense with the consultation requirements.
15. 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 prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
16. Accordingly, I grant unconditional dispensation from compliance with the consultation requirements.
17. However, 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. Therefore, if the Respondents do have concerns about the extent of their liability to pay towards the cost of the works it is open to them to make a separate application to the tribunal to determine the reasonableness of the cost.

Costs

18. There have been no cost applications.

Name: Judge P Korn

Date: 30 March 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.