



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

**Case Reference** : **LON/OOBE/LDC/2023/0074**

**Property** : **All residential leasehold properties  
Managed by the London Borough of Southwark**

**Applicant** : **London Borough of Southwark  
[Hsg.homeownership@southwark.go.uk](mailto:Hsg.homeownership@southwark.go.uk)**

**Respondents** : **All leaseholders**

**Application** : **Dispensation from consultation  
requirements - sections 20 and 20ZA  
Landlord and Tenant Act 1985**

**Date of Directions** : **04 September 2023**

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**DIRECTIONS FOLLOWING CASE MANAGEMENT HEARING ON  
30 August 2023**

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This was a remote hearing carried out using the HMCT video hearing service. Unfortunately, there were technical difficulties with sound and connectivity throughout the hearing, for which the Tribunal apologises to all those attending and to any Leaseholders who were unable to connect.

The Council was represented by Mr Walsh. 13 Leaseholders joined the hearing of which 2 were only able to connect by audio. One of the Leaseholders was able to listen to the hearing but had no audio output. It was not satisfactory, and these Directions therefore allow the parties to seek further or different directions if they do not think they were able to effectively make their representations at the hearing due to the technical difficulties experienced throughout.

Despite encouragement the participating Leaseholders had not managed to arrange single (or group) representation. The Tribunal had directed the Council to post the email address of Mr Martindale (a leaseholder prepared to undertake group representation) on its website. Mr Martindale confirmed however that he had not been contacted to represent any other leaseholder.

Mr Walsh provided a helpful skeleton argument prior to the hearing which summarised the Council's attempts to comply with the consultation requirements and the reason it was now seeking retrospective dispensation for some, or all of the requirements which could not be complied with prior to placing the contract of insurance with Protector, together with brief proposals for the onward conduct of the case.

For the benefit of Leaseholders I outlined the issues relevant to this application following the decision of the Supreme Court in *Daejan Investments Limited v Benson* [2013] UKSC 14, and gave some examples of concerns raised by leaseholders about the process and outcome of the tender exercise, which were not issues that the Tribunal could determine on this application. Such as:

- (a) The Council's approach to the tender exercise;
- (b) Lack of urgency to test the market's appetite for leasehold block insurance, given the difficult market conditions;
- (c) The lack of comprehensive surveys of the Council's buildings envelopes and fire safety measures;
- (d) Historic failures to quickly and competently to remediate damage, particularly water ingress and its effect on premiums;
- (e) Failure to apportion the premium fairly between the buildings and/or leaseholders;
- (f) Protecting its administrative burden at the expense of leaseholders' interests.

I explained that although concerns such as these may be legitimate, they raised issues that could only be satisfactorily determined by the Tribunal on an application under s27A of the Landlord and Tenant Act 1985.

The sole issue before the Tribunal on this application is to determine whether the Council's failure to meet the s20 consultation requirements had caused material prejudice to the Leaseholders that would not have been caused had the consultation requirements been fully complied with. I explained that if the Tribunal exercised discretion to order dispensation it had power to impose conditions on any such order provided the terms were appropriate to the dispensation sought.

Mr Walsh raised the possibility of referring this case to the President of the Property Tribunal to determine whether it was suitable for transfer to the Upper Tribunal. However, as it is not possible ahead of the Leaseholders filing expanded statements of case and/or witness

statements to determine what are the relevant issues in this case, it was agreed that this question would have to be considered at a later date.

One Leaseholder raised concerns about the lack of involvement of various leaseholder/homeowner forums which had apparently hitherto been used by the Council as a recognised structure for the dissemination of information to leaseholders. The Leaseholders Association of Southwark 2000 (LAS 2000), the Leasehold Working Group and Southwark's Home Ownership Forum were specifically mentioned. Concern was also voiced about the affordability of legal advice and/or representation for Leaseholders. Mr Walsh was understandably unable to comment on the Council's willingness (or not) to fund any advice for the Leaseholders.

Some of the Leaseholders participating on the CMH were members of at least one of the forums and expressed a wish for additional time to get together with other leaseholders, (including Mr Martindale) with a view to obtaining advice before preparing their detailed statements.

## **DIRECTIONS**

1. On or before the **8 September 2023**, the Council must serve these directions on all Leaseholders by uploading an electronic copy to its website.
2. If it has not already done so, the Council must also contact LAS 2000, the Leasehold Working Group and Southwark's Home Ownership Forum, with a brief explanation of the proceedings and provide a link to where the documents can be viewed on the Council's website.

## **Evidence**

3. The Council may, if it wishes, file a supplementary statement of case no later than **4. pm on 29 September 2023**. The statement must be filed with the Tribunal and uploaded to the Council's website.
4. No later than **4. pm on 4 November 2023**, Leaseholders may if they wish (either individually or jointly) prepare and file an expanded statement of case, to which they should attach any witness statements of fact on which they seek to rely. The generous time allowed for compliance takes account of the possibility that some Leaseholders may not have managed to join the CMH or make their views on the proposed timetable known. The time limit is deemed sufficient to allow Leaseholders to collaborate on procuring advice and to appoint representatives if they wish.
5. **By the same date** any Leaseholder wishing to attend the final hearing of this matter (which the Tribunal anticipates listing during December 2023/January 2024) must notify the Council and the Tribunal with their contact details.
6. The Council must prepare and no later than **4. pm on 4 November 2023** file and post on its website copies of any witness statement on which it seeks to rely.

7. The parties may apply for further directions if required, but any application by a party for further directions concerning disclosure, admissibility of evidence, permission to file additional statements, or for consideration of referral of this case to the Upper Tribunal, must be made no later than **4.pm on 11 November 2023**.

### **Hearing**

8. The mode and length of the hearing will be determined following receipt of the parties' statements. It is anticipated that 2 days should be sufficient but if the parties believe that estimate to be unrealistic, they should make their views known when filing their statements.
9. The Tribunal will consider listing this as a face to face hearing in London (rather than a remote hearing) if the number of participants exceed that which can be satisfactorily accommodated on a remote platform. The difficulties experienced at the CMH are unusual, most remote hearings including those with significantly more participants run smoothly. The venue will be fixed and notified to the parties once the number of participants is known.
10. The Council is responsible for preparing a composite hearing Bundle of all the documents in this case. Not less than 28 days before the hearing the Council shall post a draft Bundle index on its website. The Respondent Leaseholders must contact the Council within 7 days of the Bundle index being posted with any comments concerning the documents included in (or excluded from) the Bundle. If no comments are received by the Council the Bundle shall be deemed agreed. Any unresolved issue concerning the contents of the Bundle must be referred to the Tribunal for further directions at the earliest date practicable.
11. The Tribunal may issue further directions for the production of additional paper bundles if the case is listed for a face to face hearing.
12. **The parties are referred to the attached Tribunal Guidance on the Preparation of digital Statements and Bundles with which they must comply when preparing and filing their statements and the Bundle**
13. Leaseholders opposing the application are reminded to check Southwark website regularly for further Directions and correspondence from the Tribunal.

**D Barlow**  
**Deputy Regional Judge**

**04 September 2023**

List of Respondent Leaseholders (or representatives of other leaseholders) participating in the CMH

- (1) Mr Neil Pandy
- (2) Mrs PapaChristoph
- (3) Ms Jo Green
- (4) Ms India Hill
- (5) Ms Elaine Mills
- (6) Ms Belinda Blanchard
- (7) Mr Neil Martindale
- (8) Mr Jack Heath
- (9) Ms Bonnard
- (10) Ms Abdah Khan
- (11) Mr George Stowell
- (12) Mr Brendan O'Brien
- (13) Ms Sophia Senton