



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

Case Reference : LON/00AW/LDC/2020/0072P

Property : 36 Holland Park London W14 3TA

Applicant : 36 Holland Park Ltd

Representative : Mr Andrew Linger, Quadrant Property
Management Ltd

Respondents : See attached schedule of lessees

Representative : None

Type of Application : Dispensation from consultation
requirements under section 20ZA
Landlord and Tenant Act 1985 (“the
Act”)

Tribunal Member : Mr Charles Norman FRICS
Valuer Chairman

Date of Decision : 20 September 2020

Determination by Written Representations

DECISION

Decision

1. The application for dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the invoices set out in Paragraph 2 below is **GRANTED**.
2. The invoices are as follows:

10.02.2020	Richard F Gill Associates (Consulting Engineers)	£648.00
23.06.2020	C McKoy Limited (Building Contractors)	£3,900.00
10.07.2020	CKW Surveyors Limited	£1,080.00
24.07.2020	C McKoy Limited	£720.00

Reasons

Background

3. This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was PAPERREMOTE. A face to face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 57 pages the contents of which the Tribunal has noted. This was supplemented by a 5 page document following a request by the Tribunal. The Decision made is set out at Paragraphs 1 and 2 above.
4. Application to the Tribunal was made on 25 March 2020 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) (set out in the appendix).
5. Directions were issued on 31 July 2020. The Directions set the matter down for determination by written representations, unless any party made a request for an oral hearing, which none did. The Directions required the applicant to send each of the leaseholders a copy of the application form, the directions and any additional available evidence by 10 August 2020 and to give publicity to the application in the block, evidence of which was provided to the Tribunal. In addition, the respondents were invited to respond to the application.
6. The Tribunal did not consider that an inspection of the property was necessary.

The Property

7. The property is described as a Victorian House converted into eight flats on basement, ground, first, second and third floors plus basement vaults. The building is said to be listed.

The Respondents' leases

8. A sample lease of Flat 8 was supplied, dated 1 September 2003 by which a term of 999 years was granted by the applicant. Paragraph 1 of the Fifth Schedule of the lease imposes an obligation upon the lessor inter alia to maintain the external walls, structure and boundary walls. Clause 4.3 obliges the lessee to contribute to such costs.

The Applicant's Case and Nature of the Works

9. The basis of the application was stated as follows: *“Cracks have appeared in one section of the property. It is necessary to put in steel supports to prevent the wall collapsing. We have instructed a structural engineer to find a long term solution.”* The qualifying works were described as *“the installation of steel supports to prevent the external wall leading to the basement from collapsing. So far, initial Acro props are in place, but the structural engineer is arranging for a steel frame to be installed. The engineer will also devise a long-term solution to the movement of the wall.”* The applicant also stated that the wall leading to the basement is in a dangerous condition and would collapse if it was not supported.
10. The applicant's case was supported by two reports from Richard F Gill & Associates, London W2, consultant structural engineers dated 10th of February and 24 April 2020. In summary, the first report noted that there was recent cracking to the front boundary wall and brick retaining walls adjacent to the steps leading to flat one. An old crack had reopened on the front boundary. The gatepost indicated some recent movement. There was a vertical tapered crack in the right hand side retaining wall of the garden. The brick wall is cracked through and was no longer supporting the soil adequately requiring structural repair or renewal. The cracked corner of the garden retaining wall should be repaired with stainless steel Helibars and ground anchors which could be made good by render finish. A more permanent solution would be to take down the wall and rebuild it in reinforced concrete. The April report noted that further cracking was reported. The walls adjacent to the steps and entrance to flat one were not considered stable in their present condition and temporary propping was advised until repairs could be carried out. To prevent further damage, it would be necessary to provide temporary support to the wall and a scheme bracing the side and rear walls with steel frames.

The Respondents' Case

11. No replies were received from the respondents.

The Law

12. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

13. The Tribunal accepts the evidence provided by the consulting engineers' reports that the work was urgently required. However, the Tribunal was concerned that little detail of the works or their extent was provided by the applicant in the electronic bundle. There were no quotes, invoices or specifications. The grant of dispensation from the consultation requirements under section 20ZA of the Act is a departure from compliance with the normal statutory provisions involving the exercise of a discretion by the Tribunal. The burden is on an applicant to demonstrate that dispensation would be reasonable on the facts of each case. Therefore, the Tribunal requested further information. This was provided quickly with the four invoices referenced at Paragraph 2 above.
14. The Tribunal also notes that there was no indication of support for the application from any of the respondents.
15. In conclusion, having accepted the consulting engineers' reports and considered the invoices provided, the Tribunal determined that the appropriate outcome was to grant dispensation unconditionally in respect of the following works:
 - Installation of Temporary Acro Props
 - Installation of temporary steel frame to support the wallas more particularly referenced in the invoices referred to at Paragraph 2 above.
16. This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of section 27A of the Act.

C Norman FRICS
Valuer Chairman

20 September 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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. Where possible any such application should be made by email to London.Rap@Justice.gov.uk.

- 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.
- 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

36 Holland Park, London W11 3TA

List of Respondents

Flat	Leaseholder	Address
Basement-North	Mr R D & Mrs K M Harpin	c/o Ruth Passey , PO Box 53, The Priory Estate, Nun Monkton, York YO26 8ES
Basement-South	Mr S Mardeross	Flat 2 (Basement South), 36 Holland Park, London W11 3TA
Ground Floor North	Mr L S Greig	Flat 3 (Ground Floor Flat North), 36 Holland Park, LONDON, W11 3TA
Ground Floor South	Mr L S Greig	Flat 4 (Grd Floor Flat South), 36 Holland Park, LONDON, W11 3TA
First Floor North	Ms A Borisova	1 Wetherby Gardens, London SW5 0JN
First Floor South	Mr A Salkin	112-22 69th Road, Forest Hills, New York 11375-3922, USA
Second Floor	Mr J J Coldwell	Whole Farm, Stone, Tenterden, Kent TN30 7JG
Third Floor	Mr R Katz	27 Lansdowne Walk, London W11 3AW