



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

Case Reference	:	LON/00AAG/LDC/2020/0141P
Property	:	The Tower, 55 Fitzjohn's Avenue, London NW3 6PH
Applicant	:	The Tower Residents Company Limited
Representative	:	Aldermartin, Baines & Cuthbert, property managers (ABC)
Respondent	:	The lessees named on the schedule attached to the application.
Representative	:	None
Type of Application	:	An application under section 20ZA of the Landlord & Tenant Act 1985 for dispensation from consultation prior to carrying out works from consultation prior to carrying out works
Tribunal Members	:	Mr I B Holdsworth FRICS MCI Arb
Date and venue of Hearing	:	15th March 2021. Remote hearing on papers
Date of Decision	:	15th March 2021

DECISION

Decisions of the Tribunal

This has been a remote hearing on the papers which has been not objected to by the parties. A face-to-face hearing was not held because all issues could be determined on paper. The documents referred to in this Decision are in a submitted bundle of 62 pages, the contents of which are noted.

Decisions of the Tribunal

The tribunal determines that dispensation should be given from all the consultation requirements in respect of repair works to remedy water ingress to Flat 1. The remedial works include a replacement drainpipe, work to the valley gutter adjacent to flats 5 and 8, a parapet wall repair, surface tanking and the installation of a chemical injection dpc to exterior walls of flat 1. These are defined as (“the Works”) at The Tower, 55 Fitzjohn’s Avenue, London NW3 6PH as required under s20 of the Landlord and Tenant Act 1985 for the reasons set out below.

The application

1. The applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) to dispense with the statutory consultation requirements prior to carrying out a necessary scheme of works “the Works”, to The Tower, 55 Fitzjohn’s Avenue, London NW3 6PH (“**the property**”).
2. An application was received by the First-tier Tribunal dated 4th September 2020 seeking dispensation from the consultation requirements. Directions were issued on 7th October 2020 to the applicant. These Directions required the applicant to advise all respondents of the application and provide them with details of the proposed works.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. This matter was determined by written submissions. The applicant submits a bundle of relevant materials to the tribunal.
5. No submissions are received from the respondents.

The background

6. The property which is the subject of this application is a three storey building with ten self-contained flats built. The tribunal is told it is a traditionally built house that was subsequently converted to flats after construction as a dwelling in the nineteenth century.
7. The applicants in their submission to the tribunal report that the leaseholders of flat 1 suffer from water ingress from both penetrating and rising damp. This dampness has impacted on the living conditions of the leaseholders of flat 1 and the applicants contend that without the Works this will persist. The applicants claim the specified remedial works should be undertaken quickly to ensure the health and safety risks posed by damp living conditions are mitigated without delay. They argue compliance with the statutory consultation procedure would cause unnecessary delay to undertake the Works.
8. Works quotations prepared by Kenwood Plc a specialist damp contractors and CJAP builders, a general building contractor are submitted to the tribunal in the applicants bundle. They identify a number of defects with the property, which include:
 - blocked rainwater gully between flat 5 and 8;
 - damaged and fractured render and brickwork;
 - extensive wetting of the exposed brickwork with failing brickwork mortar.
 - Penetrating and rising dampness to flat 1.
9. A schedule of repair works is prepared by Kenwood Ltd. They quote a total cost of £18,530 exclusive of VAT for the scheduled works. No detailed price quotation is submitted for the CJAP works.
10. The applicants contend that the repairs are needed urgently for the following reasons:
 - the persistent dampness present in flat 1 poses a health and safety risk to the building occupiers;
 - any delay in rectifying the rainwater leak may lead to further damage to the building particularly the masonry and render affected by water spillage; and
 - due to the age of this building some of the rainwater goods, valley gutters, brickwork and render are in a fragile condition. Early

repair of identified defects will reduce the likelihood of any consequential defects being caused to these building elements.

10. The tribunal are told the managing agents commenced stage 1 of the Section 20 consultation on 4th September 2020. The managing agents confirm at page 40 of the bundle that no responses were received from any respondent leaseholders to this consultation.
11. Prior to this determination the tribunal had available a bundle of papers which included the application, the directions, a copy of a report prepared by Kenwood Ltd and CJAP contractors. Copies of specimen leases is also submitted with the application.
12. The only issue for the tribunal to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the Works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

The determination

13. The tribunal has considered the papers lodged. There is no objection raised by the respondents, either together or singularly.
14. There is a demonstrated need to carry out the works urgently to reduce the risk of penetrating dampness to flat 1 and improve the living conditions of the occupants. Some delay to undertaking the Works has been caused by the Covid-19 pandemic and it would not be appropriate for the statutory consultation process to add to this delay without a discernible benefit to the leaseholders.
15. The tribunal cannot identify any prejudice caused to the respondents by the grant of dispensation from the statutory consultation procedure.
16. It is for these reasons the tribunal is satisfied it is appropriate to dispense with the consultation requirements for the remedial works.
17. **This decision does not affect the right of the respondents to challenge the costs or the standard of work should they so wish.**
18. **In accordance with paragraphs 9 and 10 of the Directions, it is the applicant's responsibility to serve a copy of the Tribunal's Decision on all respondent leaseholders to the application.**

Valuer Chairman Ian B Holdsworth

15th March 2021

Appendix of relevant legislation

Section 20 of the Act

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long-term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

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.

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).