



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

Case Reference : **CAM/22UH/LDC/2022/0037**

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

Property : **Egg Hall, Epping, Essex CM16 6SA**

Applicant : **Chime Properties Limited**

Representative : **JB Leitch Solicitors**

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

Type of application : **For dispensation from consultation
requirements - Section 20ZA of the
Landlord and Tenant Act 1985**

Tribunal member : **Judge Wayte**

Date of decision : **21 February 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents I was referred to are in a bundle prepared by the Applicant of 209 pages. I have noted the contents and my decision is below.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in relation to the works described in the statement of case; namely, emergency works to remove a section of the boundary wall to the property and replace it with temporary fencing and protective privacy sheeting.

The application

1. The Applicant applied for dispensation from the statutory consultation requirements in respect of qualifying works to remove a section of the boundary wall to the premises, which was said to be dangerous. The anticipated cost of the emergency works was some £6,600, approximately £507 per owner. The works commenced on 7 November 2022.
2. The relevant contributions of the Respondents through the service charge towards the costs of these works would potentially be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
3. The Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to retrospectively dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
4. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable, or what proportion is payable.**

The property, the parties and the leases

5. The Applicant is the relevant landlord of the Property, which is described in the statement of case as consisting of estate roads, 13 maisonettes and 13 ground floor flats and garages. The estate roads and maisonettes are bordered by a boundary wall.

6. A sample lease of the maisonette known as 12 Egg Hall was produced and it is assumed that all relevant leases are in the same form. The lessor's covenants in respect of the boundary wall are unclear but the lease clearly requires the leaseholder to pay a proportionate part of the cost of keeping the walls surrounding the maisonettes (described in the lease plan as between the points marked A and B and C) in good repair and condition and therefore implies that the lessor is responsible for that work.

Procedural history

7. On 19 December 2022, the tribunal gave case management directions. The directions included a reply form for any Respondent leaseholder who objected to the application to return to the tribunal and the Applicant by 23 January 2023, indicating whether they wished to have an oral hearing. The directions provided that this matter would be determined on or after 6 February 2023 based on the documents, without a hearing, unless any party requested one.
8. The directions required the Applicant to serve the application and directions on the leaseholders and to display a copy in the communal parts of the property. On 9 January 2023, the Applicant's solicitors confirmed that they had sent the application by first class post to all the leaseholders on 4 January 2023, as required, but there was no communal area to display a copy of the application as the properties are all maisonettes rather than flats in a block. In the circumstances I have waived this requirement.
9. On 30 January 2023, Luan Domi of 16 Egg Hall wrote to the tribunal. He explained that he had bought the property on 10 December 2021 and had been unaware of any issues with the boundary wall until he received a copy of the application. However, he was willing to accept the repair and indicated in the response form that he did not wish to attend an oral hearing. No other leaseholder has responded and no party has requested an oral hearing. Accordingly, this determination is based on the documents produced by the Applicant in their bundle. On reviewing these documents, I considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant's case

10. As indicated above, the Applicant provided a statement of case which set out in some detail the issues with the boundary wall, which date back to at least July 2020. On that date Epping Forest District Council wrote to the Applicant stating that the wall forming a boundary between the communal gardens and the garage block had fallen into such a state of disrepair that it was dangerous. The Applicant was advised to consult a surveyor due to the length of the wall.

11. Following that letter, the Applicant instructed Project Chartered Surveyors to carry out an inspection. Their report, dated 7 August 2020, noted multiple failings. The leaseholders disagreed with the conclusions and instructed their own expert, IE Imperium Engineering who reported on 2 September 2020. The report accepted that all the walls had failed in some way but generally recommended repointing as opposed to removal.
12. A tender report was subsequently prepared in April 2021 and the Applicant “sought to engage with the leaseholder(s)”. In the absence of any progress, Epping Council advised on 14 December 2021 that they would be seeking an order from Chelmsford Magistrates Court for the works to take place. Due to the delay, the recommended contractor retracted their tender and a revised tender resulted in much higher quotes, almost four times the amount. That led to further conversations with the leaseholders and a third tender in 2022.
13. Again, in the absence of progress in respect of wider repairs and following a meeting with the Council in October 2022, the Applicant authorised emergency works to remove the dangerous section of the wall and replace it with temporary fencing and protective privacy sheeting. Those works were estimated to cost a total of £6,600, approximately £507 per owner. The leaseholders were notified that the works would commence on 7 November 2022 and that the Applicant would be applying for dispensation of the consultation process owing to the urgent nature of the works.
14. There were several responses to that letter indicating some dissatisfaction amongst the leaseholders with the time taken to progress the issue, the performance of the managing agent HomeGround and other issues. It would appear that this dissatisfaction is chiefly aimed at any more substantial repairs to the wall as only one response was received in respect of the application for dispensation in relation to the emergency works as set out above.

The Respondents’ position

15. As noted above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant. The tribunal received one response from Mr Domi, who indicated that he did not wish to oppose the application or attend an oral hearing. No other responses were received by the Applicant or the tribunal. In the circumstances, the tribunal concluded that the application was unopposed.

The tribunal’s decision

16. In the circumstances, based on the information provided by the Applicant (as summarised above), I am satisfied that it is reasonable to dispense with the statutory consultation requirements in relation to the relevant works.
17. **As noted above, this decision does not determine whether the cost of these works was reasonable or payable under the leases, or what proportion is payable under the lease(s), only whether the consultation requirements should be dispensed with in respect of them.**
18. There was no application to the tribunal for an order under section 20C of the 1985 Act.

Name: Judge Wayte

Date: 21 February 2023

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).