



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

Case reference : **LON/00AG/LDC/2023/0070**

HMCTS Code : **P:PAPERREMOTE**

Property : **16 Priory Terrace, West
Hampstead, London NW6 4DH**

Applicant : **Stripecross Limited**

Representative : **Iram Nabi, Property Manager,
HML Group**

Respondents : **The Leaseholders of flats 2,3 and 4
16 Priory Terrace, West
Hampstead, London NW6 4DH**

Type of application : **An application for dispensation
from the consultation
requirements of s.20 Landlord and
Tenant Act 1985**

Tribunal member : **Judge D Brandler**

Date determination : **3 July 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that we were referred to are in an electronic bundle prepared by the applicant containing 81 pages. References in this decision are to electronic page numbers in the Applicant's bundle in square brackets. The order made is described at the end of these reasons.

Decision

1. The Tribunal refuses the Applicant dispensation from the statutory consultation requirements in respect of remedial works to the manhole chamber at the front of the property at 16 Priory Terrace, West Hampstead, London NW6 4DH ("The building").

Background to the Application

2. The Tribunal did not inspect the building as it considered the documentation and information before it in the appeal bundle enabled the Tribunal to proceed with this determination.
3. This has been a paper hearing which has not been objected to by the parties. The Tribunal had before it an electronic bundle prepared by the applicant in accordance with the Tribunal's directions issued on 17 May 2023.
4. The applicant landlord 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 respect of remedial works to the manhole chamber at the front of the property.
5. The applicant reports that rats have chewed through the sewage pipe and gained access to flat 2 [6]. They report that contractors have attended to provide a quotation for remedial works. The Applicant claims that the contractors report that the pipe is "*too weak*" and this could happen again. The estimated costs are said to be £3,042.00 inclusive of VAT. At the time of the application the works had not been carried out [6]. However, by the date the hearing bundle was produced, works were carried out as evidenced by the invoice and confirmation of works carried out [30].
6. The applicant's agent further asserts that all the leaseholders have received notification in writing that they are seeking dispensation, have

been given the opportunity to nominate a contractor, and all confirm that they agree to dispensation

7. The works were said to be urgent because the agent states that “*delays will cause unreasonable cost, the health and safety and welfare of the residents, repairs could not be anticipated*”.
8. The building is a house converted into 4 flats with a very small front garden and pathway. The property also has a rear garden.

The leaseholders’ case

9. An objection to this application has been received from Mr Vyras, who represents his daughter, the leaseholder of flat 3. The bases of the objection are as follows:
 - (a) The applicant has never sent them notification of their intention to apply for dispensation, and the copy now sent to them appears to be in draft form. Further he argues that the alleged notification merely asks the leaseholders to nominate within 2 days a contractor “if they so wish” but without providing details of the proposed works or any reference to the estimate obtained.
 - (b) The applicant has provided no evidence to support the claim that rats have caused damage, or any evidence of the existence of rats anywhere in the building, or that rats had entered flat 2 from the sewage/soil pipe.
 - (c) Mr Vyras inspected the subject sewage pipe himself and he reports that “*this is the original cast iron pipe, connected directly into the alleged manhole...*” Mr Vyras goes on to asserts that this “*cast iron sewage pipe is in regular everyday use by all the residents in the block, it runs from the manhole vertically up and along the external wall and enters Flat 2 at 2.60 m high entry point through the original cast iron bend*”. Photographs are attached. Mr Vyras asserts that rats could not chew through the pipe or enter or travel through the pipe at such height, and that he would expect signs of rats to be on the manhole level. However, Mr Vyras spoke to the tenant of the lower ground floor flat who has been living there for 30 years. That tenant assured Mr Vyras that he has not seen any sign of a rat in his flat.
 - (d) The contractor’s estimate, it is submitted, is based on allegations and representations from Flat 2
 - (e) It is submitted that the respondents will suffer considerable financial hardship if this application would be approved and will prejudice their ability to inspect and oversee where merited the

service charges on their block. There is also concern that the freeholder will pay for these works from the reserve fund.

Reasons for Decision

10. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
This application does not concern the issue of whether or not service charges will be reasonable or payable.
11. Having read the evidence and submissions from the applicant and noted the objections made by the leaseholder of flat 3 to this application, the Tribunal determines the dispensation issues as follows.
12. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
13. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
14. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;
 44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
 45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the

Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

15. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
16. The Applicant's documentary evidence purporting to support a dispensation application was lacking in detail. In particular:
 - (a) The Tribunal has been provided with a "*deed of variation of Lease dated 4th June 1986 relating to Flat 2, Ground Floor, 14 Priory Terrace, London NW6*" [39]. The only explanation of why a specimen lease has been provided for 14 Priory Terrace, rather than 16, maybe explained in the underlease dated 17/07/1963 provide in relation to Flat 3 at 16 Priory Terrace, which states "*TOGETHER with the contiguous property known as 14 Priory Terrace forms one building (hereinafter called "the building") known as 14 and 16 Priory Terrace aforesaid formerly comprising a pair of semi-detached houses but now comprising a total of nine flats which building together with the piece or parcel of land whereon the same is built is hereinafter called "Priory Terrace"* [60]. However, this does not accord with the Applicant's description in the application form of being a "*4 flats in a development*" [4].
 - (b) Nor is there any explanation for the redaction of the '4' on that lease and its replacement by '6' to suggest that it is the lease for 16 Priory Terrace [39,45]. However, the remainder of the lease refers specifically to 14 Priory Terrace [40,43,44,46,50]. The documentation, including emails, attached to that lease refer to the wrong address and identify works which do not relate to the subject matter of this application. No explanation has been provided.
 - (c) The contractor's quotation dated 13/02/2023, upon which the Applicant seeks to rely, records what works are to be carried out, but is silent on why there is urgency for those works, makes no mention of whether rats have chewed through the sewage pipe, and no mention, as claimed by the Applicant, that "*the pipe is too weak and this can happened again.*" (sic)[6].
 - (d) The only mention of rodent in the report is the installation of an anti-flood valve as well as a "rodent blocker" [32].
 - (e) The applicant does not explain why leaseholder details for flats 2-4 only have been provided, when there are 4 flats in the building.

17. The Tribunal have concerns about the lack of evidence or explanation as to why these works were considered to be urgent. The narrative in the application form is not supported by the contractor and has left the Tribunal with doubts about the need for the works. If there was entry to a flat by a rat, the Tribunal would have expected to see some evidence of that. Similarly if there was evidence of a rat chewing piping, the Tribunal would have expected to see evidence.
18. It is noted that not only was insufficient time allowed by the Applicant for the respondents to provide alternative contractors, but they were not advised of the purpose or extent of the works.
19. Having considered all the evidence, the Tribunal found prejudice to the leaseholders because of the Applicant's lack of clarity, lack of evidence to support the requirement for urgency and lack of supporting evidence to confirm the claims made. Had the Applicant provided the respondent leaseholders with the information about the requirement for works, the leaseholders would have had the opportunity to ask questions, raise concerns, challenge amounts charged or provide names of alternative contractors. As such they had none of those opportunities and therefore suffered prejudice.
20. As stated above, the only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
21. The Tribunal refuses the applicant dispensation from the statutory consultation requirements in respect of remedial works to the manhole at 16 Priory Terrace, West Hampstead, London NW6 4DH ("The building").

Judge D Brandler
3 July 2023

APPENDIX 1
RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—

- (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.

- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
- (b) invite the making, in writing, of observations in relation to those estimates;
- (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.