



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

Case reference : **LON/00BK/LDC/2023/0101**

Property : **108 St George's Square ,London SW1V 3QY**

Applicant : **Mr Anthony Hambro**

Representative : **Mr Phillip Bryne, counsel**

Respondents : **The leaseholders of 108 St George's Square,
London SW1V 3QY**

Representative : **Ms Katie Gray counsel for leaseholder of the
Ground Floor Flat**

Type of application : **Application for dispensation to consult –
section 20ZA of the Landlord and Tenant Act
1985**

Tribunal : **Judge Tagliavini
Mr John Naylor MRICS FIRPM**

Date of decision : **8 August 2023**

DECISION

The tribunal's summary decision

- (1.) The tribunal grants the applicant dispensation pursuant to s.20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of all consultation and works carried out to the structural exterior columns and cross brace fixings as identified in the reports of Acorn Restorations dated 8 December 2020 and Empace Consulting Structural Engineers dated 7 December 2020 and carried out by Basement Structures Limited and Home Construction Maintenance.
 - (2.) The tribunal makes an order pursuant to section 20C of the Landlord and Tenant Act 1985 limiting the applicant landlord's recovery of the costs of the application through the service charges.
-

1. The applicant has applied for dispensation from the statutory consultation requirements in respect of works which were completed in October 2021. These works were to add new columns to support the existing columns and cross bracing fixings which had corroded and snapped and were supporting the building structure. It was identified by the Structural Engineers at Empace Consulting Limited in its report dated 7 December 2020 and by insurance assessors, that if works were not carried out urgently then there would be a risk of further substantial damage that would adversely affect the structural integrity of the building.
2. The project to replace and repair the columns supporting the structure was initially consulted on with the leaseholders by a section 20 notice sent to all lessees on the 20 October 2020. However, it was identified that it would be more feasible and cheaper to add support columns rather than remove and replace the existing ones and the original contactor was dis-instructed. Subsequently, a new scheme of works was devised and implemented and carried out by Home Construction Maintenance to avoid risk of further damage with the final cost of the works said to be £11,300 less than the original estimate.
3. The application made under section 20ZA deals only with the issue of dispensation of the consultation requirements for the works and does not concern the issue of whether any service charge costs in respect of those works will be reasonable or payable and those issues are dealt with in ref: *LON/00BK/LSC/2023/0086*.

The hearing

4. This application was determined at the same time as a claim transferred from the county court for arrears of service and administration charges from the lessee of the ground floor flat in ref: *LON/00BK/LDC/2023/0101*. The application was heard by the tribunal at an oral hearing on 23 June 2023.

Both applications concerned the same building and landlord, although the transferred claim concerned the leaseholder of the ground floor flat only.

5. As the applicant failed to follow the tribunal's directions and provide a separate bundle in respect of the s.20ZA application for the hearing, the tribunal provided the parties with an opportunity to make further written submissions and provide a proper bundle to the tribunal by 30 June 2023.
6. The applicant confirmed to the tribunal that all lessees had been formally notified of the application as required by the tribunal, although the lessees of the basement, first and second floor flats are or are members of the applicant's family. The leaseholder of Flat 5, Crown Park Investments Limited confirmed it did not oppose the application for dispensation. Only the leaseholder of the ground floor flat, Dr Wafik Moustafa objected to the application and the tribunal considered the parties' documentary and oral evidence in respect of the application at and after the hearing held on 23 June 2023 on receipt of the late submitted documents.
7. In objecting to the application Dr Moustapha relied on his Statement of Case dated 5 June 2023 and also gave oral evidence to the tribunal.
8. Written submissions were also received after the hearing as directed by the tribunal.

The tribunal's decision and reasons

8. The tribunal grants dispensation pursuant to s.20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of all the consultation and works of repair to the structural columns on the exterior including work carried out by Empace Consulting Limited, Basement Structures Limited and Home Construction Maintenance.
9. The tribunal has had regard to the urgent and significant nature of the works, the extensive correspondence passing between the applicant and Dr Moustafa toward the end of 2020 when the need for works was identified and throughout most of 2021 until their completion. The tribunal also considers the indication given in email correspondence dated 9 December 2020 that Dr Moustafa did '[N]ot wish to apply the requirements of Section 20...' and finds that there was an acceptance by Dr Moustafa of the need for works without a full consultation process being followed.
10. Although Ms Grey submitted there were two sets of works as the original plan to replace the pillars was altered to the addition of the existing pillars, the tribunal finds there was only one set of works to which alterations to the original specification were made.
11. The tribunal finds that throughout the period during which works were being arranged and carried out, Dr Moustafa was kept updated with their progress by the applicant. The tribunal finds the respondent was informed of the initial failed attempt at their being carried out and the replacement contractor that had been engaged to carry them out and complete the works as well as

attempts by the applicant to involve TFL in defraying the cost of the works. The tribunal finds Dr Moustafa did not indicate any objection to either the original intent works of replacement or the amended plan of works and the addition of supporting pillars to the existing, in his lengthy email correspondence with the applicant during 2020/2021. The tribunal does accept Dr Moustafa requested further information at times from the applicant but finds that this did not amount to an objection to the works.

12. The tribunal finds Dr Moustafa has suffered no substantive prejudice in the consultation process not having been fully complied with by the applicant and therefore, in the circumstances the tribunal considers it reasonable and proportionate to grant the application sought; *Daejan Investments Limited v Benson and others* [2013] UKSC 14.
13. The tribunal does not accept that dispensation should be granted on strict terms which in effect concerns a reduction in the costs of the works. The tribunal considers the appropriate forum for a challenge to the reasonableness of the cost of the works is within the transferred county court claim that has been heard at the same time as this application.

Section 20C

13. Having regard to the very late nature of the application, the subject works having been completed in October 2021, the tribunal considers it is reasonable to make an order under section 20C of the Landlord and Tenant Act 1985, limiting the recovery of the costs of the application through the service charges.

Name: Judge Tagliavini

Date: 8 August 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).