



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

Case reference : **CAM/26UE/LDC/2023/0027**

Property : **83-125 (odd numbers) Shenley Road, Borehamwood WD6 1AG**

Applicant : **Leathbond Limited**

Representative : **Higgs LLP**

Respondents : **The leaseholders of no.s 101a, 103a, 105a, 113a, 117a, 119a, and 121a**

Representative : **Stuart & Co, Solicitors**

Type of application : **For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985**

Tribunal members : **Judge K. Seward
Mr A. Tomlinson BSC (Hons)
MRICS**

Date of decision : **9 November 2023**

DECISION AND REASONS

Direction for service

The Applicant shall send a copy of this Decision to all Respondents within 7 days of the date of this Decision.

Decisions of the Tribunal

- (1) The Tribunal grants retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for qualifying works already carried out at the property to install (i) temporary supports and hoarding to a partially collapsed staircase (ii) temporary stairs over parapet wall adjacent to the property (iii) a 2 storey scaffold staircase from the car park to the second floor flats, together with works of demolition of the failed staircase and making good.
- (2) Dispensation is granted pursuant to section 20ZA of the 1985 Act for the proposed works to replace the failed concrete staircase at the property with a steel staircase, on the following terms:
 - (a) An updated statement of estimates shall be provided to the leaseholders with a shortened consultation period of not less than 14 days (unless agreement is reached sooner to instruct the lowest priced tender).
 - (b) Any Notice of Award shall be given within the usual timeframe.

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the 1985 Act for the dispensation of statutory consultation requirements in respect of certain “qualifying works” (within the meaning of section 20ZA).
2. The Applicant is the freeholder and landlord of 83-125 Shenley Road, Boreham Wood (“the property”). The building is described by the Applicant as a parade of retail units with mostly residential upper parts.
3. The Respondents are seven of the leaseholders of the upper storey flats in the property who are potentially responsible for the cost of the works under the terms of their lease.
4. The qualifying works are partially retrospective and concern the replacement of a failed concrete staircase with a steel staircase, to include temporary interim works.
5. The application form gave the service of a ‘Dangerous Structure Notice’ as a special reason for urgency in the determination.

6. By sections 20 and 20ZA of the 1985 Act, any relevant contributions of the Respondents through the service charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation etc) (England) Regulations 2003 (the “Regulations”) were: (a) complied with; or (b) dispensed with by the Tribunal.
7. In this application, the only issue for the Tribunal is whether it is satisfied that it is reasonable to dispense with the statutory consultation requirements.
8. **Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under section 27A of the 1985 Act to determine the payability of any service charge under the leases.**

Background

9. From the description within the specimen leases provided the property appears to be a building with a row of shops at ground floor level and self-contained flats above.
10. A copy of the counterpart lease for the second-floor premises at 111A Shenley Road has been provided by the Applicant. The Respondents have supplied a copy of the lease for the second floor flat at 119a.
11. No 111A includes provision at clause 3.3 for the payment by the leaseholder of a fair proportion (as determined from time to time by the landlord) of the cost, amongst other things, of maintaining repairing renewing and rebuilding such parts of the building, “including structure roof and foundations as are not the responsibility of any occupier or tenant”. The “building” is defined to mean the land and premises owned by the landlord and known as 83-125 Shenley Road. Subject to the payments being made pursuant to clause 3.3, the landlord covenants to maintain the building except to the extent that it is the responsibility of the tenant.
12. The property at 119A is a second floor flat which does not include any of the “Retained Parts”. The “Retained Parts” include the “Common Parts” which are defined to include staircases and landings of the Building that are not part of the Property, the Flats or Commercial Premises. The tenant covenants with the landlord in Schedule 4 to pay the service charge, being a fair and reasonable proportion determined by the Landlord of the Service Costs, being all costs reasonably and properly incurred (or estimated) in providing the Services. The Services include maintaining, repairing and replacing the Retained Parts.
13. The application is dated 12 April 2023. It identified that dispensation is

sought for (i) works already carried out, (ii) removal works instructed but not yet completed, and (iii) replacement works yet to be instructed, for which a shortened process could be adopted.

14. Directions were issued by the Tribunal on 6 June 2023. Those Directions required the Applicant landlord by 21 June 2023 to send to each of the leaseholders a copy of the application form (excluding any list of respondents' names and addresses), and the Directions. By the same date, the landlord was directed to write to the Tribunal to confirm that this had been done and stating the date on which this was done.
15. In a statement dated 20 June 2023, a process server acting under the direction of the Applicant's Solicitors, confirmed that each of the leaseholders had been served on 16 or 17 June 2023. Copies of the Solicitor's letter of 15 June 2023 to each leaseholder are provided. The letter enclosed a copy of the application for dispensation, supporting statements and exhibits along with the Tribunal's Directions and covering letter.
16. The Tribunal's letter of 6 June 2023 informed the Respondents that the application would be dealt with by way of written representation unless an oral hearing was requested by 5 July 2023. No such request was received.
17. The Directions gave those leaseholders who oppose the application until 5 July 2023 to respond to the Tribunal and to send to the landlord a statement in response to the application with a copy of their reply form.
18. Seven reply forms were returned to the Tribunal objecting to the application from: (i) Mark Edwards (119a); (ii) Richard Atkinson (117a); (iii) Cristian Ciocan (101a); (iv) Izet Elezi (113a); (v) Mr D. J Close (121a); (vi) Janice Silver (105a); and (vii) Janice Silver (103a). All Respondents appointed Mark Edwards as their spokesperson. They subsequently instructed Stuart & Co Solicitors.
19. The Directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. Two copies of the paginated bundle were required to be sent to the Tribunal and one copy to each Respondent opposing the application. In addition to hard copies, the Applicant was required to file the bundle in electronic format. The Tribunal has received an indexed and paginated bundle in hard copy and electronic format composed of some 451 pages.
20. Following submission of the bundle, the Tribunal received a revised Case Summary with 'minor amendments' from the Respondents' Solicitors. At the same time, they requested that a third witness statement within the bundle from Mr Oswald (for the Applicant) be disregarded as there was no provision to file a response. On 10 October 2023, the Tribunal

directed that the minor amendments and third witness statement be accepted albeit permission for late submissions should have been sought first. The Respondents were given until 17 October 2023 to make any brief response.

21. The response filed on 17 October 2023 took the form of a second witness statement from Mr Edwards with exhibits along with video footage and photographs. The Applicant opposes these filings as (i) introducing new evidence (ii) seeking costs without opportunity to respond and (iii) raising irrelevant issues. These issues have been considered by the Tribunal as a preliminary issue.
22. There is no application within Mr Edwards' witness statement for an order under section 20C of the 1985 Act to limit or prevent the Applicant recovering its costs of these proceedings through the service charge. Nor do the Respondents seek an order for recovery of their costs, as such. Rather, Mr Edwards requests that the Tribunal exercises "its power to impose a condition that the Applicant pays [the] Leaseholder's reasonable costs". The possibility of such a condition would only arise if dispensation were to be granted.
23. The Tribunal has power to grant dispensation on such terms as it thinks fit provided those terms are appropriate in their nature and effect. The Tribunal could conclude that it is reasonable to grant a dispensation if the landlord accepts appropriate conditions. This might include a condition that the Applicant pays the Respondents costs incurred in connection with the application made under section 20ZA.
24. However, the Respondents' request for such a condition has been raised at the last moment when the Applicant had no right of reply and had not indicated that it would find the condition acceptable. The matter could, and should, have been raised earlier. As such, it would not be fair or just for the Tribunal to make a dispensation conditional upon costs. The Respondents' request forms no part of the Tribunal's consideration.
25. The Tribunal directions of 10 October 2023 made clear that the Respondents could provide a brief response by 17 October 2023 to Mr Edwards' third witness statement. Any further submissions could only be made with the permission of the Tribunal, which were unlikely to be accepted. The video footage, photographs and exhibits are all new evidence regarding the temporary staircase submitted without permission. They are not accepted. Furthermore, the Respondents' Solicitors letter of 31 October 2023 was submitted outside of the stipulated timescale and without consent. Neither this letter nor the exchanges it prompted from the Applicant are accepted.
26. Similarly, the Tribunal disregards submissions over the cause of the staircase collapse and whether there has been a breach of covenant as not pertinent to the question of dispensation. Moreover, the Tribunal has

no role in apportioning blame for delays in the works.

The law on dispensation

27. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

28. 'Qualifying works' are 'works on a building or other premises' (section 20ZA(2)).

29. In the case of *Daejan Investments v Benson and others* [2013] UKSC 14 the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] 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'*.

The Applicant's case

30. On 24 January 2023 the Applicant was alerted to the partial collapse of an external concrete staircase at the property. The staircase is the only means of access for leaseholders on the upper floors of the building. That same day the Applicant contacted Alex Oswald, a Chartered Building Surveyor at Loudwater Building Consultancy, with whom the Applicant has had a long working relationship.

31. The Applicant instructed Loudwater to obtain quotations and costs for the installation of a temporary scaffold staircase along with costs for the demolition of the concrete staircase and installation of a new staircase.

32. It is the evidence of Mr Oswald that five contractors were approached but given the urgency of getting stairs on site, only one contractor was able to mobilise and erect the scaffold staircase immediately. Those works were completed on the evening of 25 January 2023. Lighting of the temporary staircase was subsequently added on 3 February 2023.

33. Earlier that day the Local Fire Brigade and District Council had inspected the staircase resulting in the Council condemning the structure by issuing a 'Notice of Intention to deal with a Dangerous Building or

Structure' under section 78 of the Building Act 1984 in respect of 'collapsed communal staircase' at 123 Shenley Road. The Notice was served because it appeared to the Council that the structure was in a dangerous state requiring immediate action to remove the danger. The Authorities remained on site until a separate contractor had erected a supporting scaffold structure below the failed stairs.

34. Despite these support works Mr Oswald says that cracks to the staircase widened with further slumping and movement. In consequence, costs for demolition were urgently obtained from two contractors, one of £37,500 (excl VAT), the other of £33,825 (excl VAT). Works of demolition and making good have since been undertaken.
35. After applying for dispensation, the Applicant supplied two specialist reports. The first report is a full condition survey of all 4 concrete staircases at the property, including the one that had collapsed. Technicians attended site in February 2023. Their report is based on sample analysis, test results and on-site inspection. It recommends that three of the staircases be subject to a structural strengthening design programme with concrete repair and protection be carried out at the same time. However, the collapsed staircase which is the subject of this application "is beyond strengthening, repair and protection and recommend a new steel staircase is constructed in its place."
36. The second report is from a Structural Engineer who carried out a visual inspection in February 2023. Having also considered the above findings of the specialist material investigations and testing, the report concluded: "*The heavily damaged and degraded reinforced concrete structure... should be fully removed and replaced with a permanent free-standing steel framed stair structure. This is to be a specialist designed and supplied item.*" It recommends the full removal of the staircase "*with immediate effect due to the risk of continued degradation and localised collapse of the structure occurring.*"
37. The Applicant has chosen a new steel staircase with two steel fabricators to be independent of the elevations. Mr Oswald states that the (now collapsed) concrete staircase was cantilevered within the building's elevation. To create a similar staircase would require structural alterations and works to the building and façade, which would be far more costly and disruptive to the leaseholders.
38. At the time of Mr Oswald's second witness statement in June 2023, the exhibited summary of costs expended amounted to £81,839.50 (excl VAT). This included installation of temporary support to the staircase, the temporary stairs, lighting, purchase of temporary scaffold, specialist reports and Loudwater's management fees. It also included £42,051 (excl VAT) in demolition costs and making good.
39. Ongoing costs are being incurred in the region of £500 per month for

hire of the scaffold stairs. Figures secured from contractors for the replacement stairs range between £39,780 and £60,000 (excl VAT). Mr Oswald warns that these figures will inevitably increase given inflation in costs, materials and labour and exacerbated by any delay.

40. In his third witness statement of 23 August 2023, Mr Oswald states that the estimate obtained by the Respondents for a replacement staircase did not allow for galvanised steel or powder coated finish which is essential as steel will corrode. It is suggested that a truncated consultation for the replacement costs could involve provision of updated quotes, including a quotation from the contractor nominated by the Respondents, with the usual 30-day consultation period, unless agreement is reached sooner to instruct the lowest priced tender. A revised estimate from the Respondents' nominated contractor has since been supplied amounting to £55,950 (excl VAT).
41. On behalf of the Applicant, Mr Oswald confirms that there is no connection between the Applicant and quoting contractors or any contractors that have carried out emergency works.

The objections

42. Mr Edwards has prepared a witness statement on behalf of himself and the other leaseholders who completed a reply form. Mr Edwards accepts it was necessary for the Applicant to act fast to shore up the failed staircase to provide access to the occupants of the flats. He further accepts that "it may not have been possible to go through the full consultation process, at least as far as the emergency works are concerned."
43. However, the Respondents question whether the failure of the staircase and consequent need for emergency works and wholesale replacement could reasonably have been avoided by appropriate regular inspections and ongoing repair/maintenance work. They submit that the Applicant failed in its duties under the terms of the leases to inspect the building and carry out repairs. Had it done so, the Respondents contend that there was a very good chance that defects with the staircase would have been identified without it becoming an emergency.
44. The Respondents claim prejudice would arise from dispensation by: (i) having no opportunity to comment on what is proposed (ii) not knowing if there is a connection between the Applicant and quoting contractors or those who carried out emergency works (iii) not having opportunity to nominate their own contractors from whom quotes should be obtained. In Mr Edwards' second witness statement he further claims prejudice through incurring legal costs in defending the application and the leaseholders facing extortionate service charges.
45. Criticism is levied at the scant detail within the Applicant's quotes and

how the highest quote of £60,000 excludes foundation works and is subject to a site survey. Mr Edwards exhibits a “substantially lower estimate” for the replacement staircase of £21,350 (plus VAT). This causes Mr Edwards to question whether proper efforts have been made to obtain reasonable quotes. He further queries why the Applicant has only so far managed to obtain two quotes for the replacement staircase.

46. If the Tribunal is minded to allow the dispensation then the Respondents request conditions as suggested by the Applicant with further detailed quotes and for some consultation even if the period is truncated.

Findings

47. The issue before the Tribunal is whether it is reasonable to grant the application to dispense with the statutory consultation requirements.
48. Whether the Applicant has discharged its contractual obligations under the lease and the collapse of the staircase was avoidable are not matters before the Tribunal in this application.
49. The Tribunal’s focus is on the extent, if any, to which the leaseholders are prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the landlord’s failure to comply with the consultation requirements.
50. Nothing before the Tribunal indicates that the works undertaken or proposed would be inappropriate to remedy the defective staircase.
51. The Tribunal finds no evidence that the Respondents would suffer prejudice if dispensation is granted for the works already undertaken. Clearly, the flats would have been inaccessible without the temporary staircase. The failed structure posed an immediate risk to health and safety necessitating emergency works as demonstrated by the ‘Dangerous Structure Notice’. The subsequent specialist reports further support the urgency to remove the failed staircase for which two quotations were obtained before proceeding to ensure a market price.
52. There is no reason to suppose that any works have or would be undertaken by a contractor who is not independent of the Applicant. The Tribunal is satisfied that the qualifying works already undertaken were necessary and urgent following the partial collapse of the staircase, such that it was not reasonable for section 20 consultation to take place.
53. The consultation requirements under the Regulations are complex. In effect there is a three-stage process. Firstly, notice of intention with opportunity for the leaseholders to make observations on the proposals. Secondly, notice of proposal to enter into an agreement, with details of estimates provided or being made available, and a further period for

observations. Thirdly, after entering an agreement, a notice to leaseholders giving reasons, summarising observations made and the landlord's response. Stage 3 is omitted if the landlord contracts with a nominated person or accepts the lowest estimate.

54. Through the Tribunal process the Respondents have been alerted to the extent of works required with specialist reports also made available. Since the application was made, the Respondents have essentially nominated another contractor to replace the staircase by producing an estimate. The revised estimate of £55,950 (excl VAT) from that contractor for a new staircase to the higher specification is within the range of prices already obtained by the Applicant.
55. Time is of the essence as the sole staircase to the flats is a temporary structure and by no means ideal particularly heading into winter. A permanent structure is clearly needed. Ongoing costs are being incurred for the scaffold stairs hire. Further delay would not be in the best interests of occupiers. Now that an estimate has been obtained from the Respondents' nominated contractor, leaseholders should be assured that they would be paying no more than is appropriate. The Respondents have not suffered a relevant prejudice in choosing to use legal representation. A full consultation exercise can be dispensed with without causing them prejudice.
56. The prices obtained by the Applicant for the replacement staircase are some months old and may require updating. With that in mind, the Tribunal considers it reasonable and appropriate to adopt the Applicant's suggestion of a truncated process for an updated statement of estimates to be provided to leaseholders. A shortened consultation period, as originally applied for, is reasonable in all the circumstances. The Tribunal considers that 14 days should be applied in place of the usual 30-day period.

The Tribunal's decision

57. The Tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
58. The Tribunal is satisfied that the qualifying works already carried out (including removal works) were urgently required and it was appropriate for such works to be undertaken without a statutory consultation process under the Regulations.
59. For the replacement works yet to be undertaken, the Tribunal considers it reasonable to apply a truncated procedure. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act on terms requiring a

statement of estimates to be provided to the leaseholders with a shortened consultation period of not less than 14 days (unless agreement is reached sooner to instruct the lowest priced tender).

60. This Decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.
61. No application is before the Tribunal for an order under section 20C of the Act (restricting the landlord from seeking their costs of this application as part of the service charge). It could be the subject of a future application should any costs be charged to the leaseholders.
62. It is the responsibility of the Applicant to serve a copy of this Decision on all Respondents.

Name: Judge K. Seward Date: 9 November 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).