



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

Case reference : **LON/00BK/LDC/2023/0141**
P:Paperremote

Property : **101A, 103A & 103B Lisson Grove**
London NW1 6UP

Applicant : **The Lord Mayor and Citizens of the**
City of Westminster

Representative : **Ms Beverley Frimpomaah of**
Westminster Council

Respondents : **Mr Mohammed Haji and Mrs Parvin**
Haji (101A)
Mr Simon Leahy and Mrs Nicola Leahy
(103A)
Ms Susan Elaine Brisley (103A)

Type of application : **To dispense with the consultation**
requirements under S.20 Landlord
and Tenant Act 1985

Tribunal member : **Mrs E Flint FRICS**

Date and venue of
determination : **6 November 2023**
Remote on the papers

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondent. A face to face hearing was not held because it was not practicable, no-one requested the same, and

all the issues could be determined on the papers. The documents that I was referred to were in an electronic bundle, the contents of which I have recorded.

Decision of the tribunal

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to replacement of the roof and removal of asbestos at 101-103 Lisson Grove London NW1 6UP.
- (2) The question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Background

1. The application under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) was made by the council on 22 May 2023.
2. The application concerned urgent repairs to the roof of the property following a leak into the top floor flat.
3. Directions were issued on 3 August 2023 requiring the applicant to prepare bundles by 19 October 2023 to include statements
 - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies and copies of any replies from the tenants;
 - (ii) The Leaseholders were asked to confirm by 21 September 2023 whether or not they would give their consent to the application.
 - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon.
4. On 25 September 2023 the Applicant, confirmed that in accordance with the Directions the leaseholders had each been sent a copy of the S20ZA application form, the applicant’s statement of case, a copy of the Directions and reply form.
5. The Leaseholders were informed in the Directions issued by the Tribunal that the question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Evidence

6. The Authority is the freehold owner of the Property, namely 101-103 Lisson Grove which comprises four flats. The building is of traditional brick construction, with a render applied at ground floor level, and “butterfly” type flat roof to each side of the roof (101 and 103 sides). The property is over 120 years old and dates back to the late Victorian era. At some point historically, the two houses 101 & 103 Lisson Grove have been laterally converted into four flats: 101A, 101B, 103A and 103B.
7. The original internal party walls have been removed and each of the four flats span the original footprint of both 101 & 103. However, the party wall between both properties is still visible on the roof, which has also led to the confusion.
8. In total, three of the four flats, have been granted long leases, and one flat (101B) is owned by The Applicant and used as a social housing rented unit, occupied by two long standing tenants of Westminster City Council.
9. There was also an issue with the Council’s records for 101-103 Lisson Grove, on the Council’s Housing Management IT system. This also added to the confusion. The building is listed separately on the Council's Housing Management IT system as three separate buildings: 101-103 Lisson Grove and 101 Lisson Grove, plus also 101 Lisson Grove. The reason for this is to ensure that the Council's Repairs Team is able to raise a repairs job under the correct Property Address, for identification purposes, as to the exact location of the necessary repair. For example, which side of the building, or within which communal stairwell, a given repair may be required.
10. However, the building is also listed on the IT system as one block (101-103 Lisson Grove) for the purpose of charging for works and services. (as it consists of one block) since the leases and lease plans refers to both buildings as one block, known as 101-103 Lisson Grove. Both the leases and lease plans refer to both buildings as one block, known as 101-103 Lisson Grove. This is also how the Annual Service Charge Estimates and Actuals are calculated, for each lessee and the Council’s tenant who occupy the 4 flats within the building. The reference to the “Block” is listed as 101-103 Lisson Grove. 101-103 Lisson Grove is an anomaly, in the row of terraced houses, as all the other units, are a vertical conversion.
11. Initially, the Applicant planned to renew the roof of 103 Lisson Grove, after the leaseholder of Flat 103B reported further leaks in her flat. The Repairs team assumed that the leak was coming from the roof above Flat 103b. Based on this, a decision was made by the Applicant to renew the roof of 103 Lisson Grove, to stop and prevent further water ingress into the building and properties below.

12. The proposed works were also deemed necessary due to the asbestos tiles on the roof potentially posing a health and safety risk to the contractors. This meant further patch repairs were not possible. Upon making this discovery, a Section 20 Notice was issued to the leaseholders in the building for the roof replacement of 103 Lisson Grove. The estimated cost for the works was calculated at £47,289.99 (excluding contingency and fees). and £53,437.68. 6.
13. Once the contractors went onsite on 15 February 2023 and began stripping off the old tiles on the roof, the leaseholder of Flat 103B queried why the works did not involve the replacement of the roof at 101 Lisson Grove. Subsequently, the Applicant's surveyor went onsite to inspect both buildings and discovered that at some point in time, there had been a lateral conversion of the properties, the internal party walls had been removed which meant that part of Flat 103B was actually under the roof of 101 Lisson Grove. This was not visible from street level, inside Flat 103B Lisson Grove, nor when the contractors went on the roof as the party wall at roof level between 101 & 103 Lisson Grove still exists, showing the roofs to be two separate roofs until the contractors began stripping off the tiles.
14. The Council Surveyor and contractors realised that part of Flat 103B sat underneath 101 Lisson Grove, and the Applicant would also need to replace the roof at 101 Lisson Grove to remedy the leak. If the Applicant had known about this information before issuing the Section 20 Notice in November 2022 the roof replacement of 101 Lisson Grove would have been included in the Notice.
15. As the contractors were already onsite and had commenced the works, the Applicant decided to continue the works and expand the works to include 101 Lisson Grove, to reduce the cost liability to the leaseholders. If the Applicant was to fully comply with the consultation requirement in relation to the other side of the roof (101 Lisson Grove) under Schedule 3 the leaseholders and the Council may have accumulated further costs, e.g. the cost of removing and erecting the scaffolding onto the block on a later date to undertake the additional works. Further delays may have also caused the leak to possibly affect the structure of the block, and all four flats not just 103B Lisson Grove. The Council was also constrained by the knowledge that some of the roof tiles were Asbestos Containing Materials (ACM), hence carrying out further temporary roof repairs on 101 Lisson Grove was not possible, due to the Health & Safety Risk.
16. The Applicant has previously conducted several sets of repair work to the roof over the years. There were nine separate repair jobs raised between November 2016 to April 2022, including brickwork, new lead flashing and replacement roof tiles. Additionally, repairs were completed to the area around the roof access hatch, and both the parapet wall and valley guttering. These repair works covered all affected areas to the roof, as necessary, and hence covered both the 101 side, and the 103 side.

17. In the course of undertaking the repairs during May 2022, the Applicant was notified by the contractor's operatives, that they suspected the roof tiles may contain Asbestos, and that they were unable to access the roof, or conduct any further works, due to this fact.
18. In total, the estimated cost of the roof replacement of 101-103 Lisson Grove amounts to £106,875.36 including all fees. This figure was estimated to be double the cost of the estimated for one side of the roof – being £53,437.68, since the job would effectively be an identical job, for the same price.
19. The decision was therefore taken, to replace the roof tiles on the 101 side of the Property, once an approved and registered contractor, had safely removed and disposed of the concrete roof tiles, which were classified as ACM.
20. As 101-103 Lisson Grove, is a Grade 2 Listed Building, planning application was required, to seek approval for the replacement of the roof. The Planning application was submitted on 2nd September 2022, and Conditional Planning Approval granted on 2nd December 2022. The Conditional Approval stipulated that, the new roof would need Welsh grey slate tiles, rather than standard concrete, clay or other material(s). This requirement, meant that the overall cost of the roof to the 103 side, would be higher, than if a standard tile had been used, for the replacement. The total estimated cost would also include the cost of removing the tiles currently *in situ*, which had been classified as ACM and presented a Health & Safety risk.
21. Due to the requirement for Planning Approval, the issue of the Section 20 Notice and subsequent replacement of the roof on the 101 side, was delayed. The Section 20 Notice of Intention was issued to the three lessees on 24th November 2022. This was a Schedule 3 Notice of Intention under the 2003 Service Charge Regulations. The Council's appointed contractor, Morgan Sindall, were allocated the roof renewal. Morgan Sindall had been appointed on a ten-year contract, and hence a Qualifying Long Term Agreement (QLTA) , under a separate consultation exercise in 2018-2019.
22. In respect of the Section 20 Notice dated 24th November 2022, for the proposed roof renewal, A total of two Observations were made by leaseholders, and these observations were given due regard by the Applicant, and responded to by 13th January 2023. One of the observations raised the matter of the lease percentage for Flat 103b, which the lessee believed to be incorrect, for her flat. The initial response was reviewed, and a follow up letter issued to the lessee of 103b, advising the matter of the bedspaces and hence lease percentage, would be looked into, once a visit and measurements had been conducted, for the flats within 101-103 Lisson Grove.

23. The lessee of 103b Lisson Grove, whose flat had experienced the leaks, contacted the Council on 14th February 2023, advising that the leaks were coming in from the 103 side of the roof. On notification of this fact, the Applicant decided, given the material facts, and the need to undertake works, in order for the cessation of the leaks / water ingress to 103b Lisson Grove, to proceed with the replacement of the roof to the 103 side of 101-103 Lisson Grove.
24. This decision was made, on the basis that, at that point in time, the most cost effective and most efficient situation, was to proceed with the full roof replacement. This would necessitate a retrospective Planning Application, for the 103 side of the roof. The Planning Department of Westminster City Council have been contacted regarding this matter, and have agreed to accept, a retrospective application. The correct application to the Planning Department, should have been made for the full and correct address, for works to the Property 101-103 Lisson Grove.
25. Two objections were raised. One was in relation to applying the correct percentage to the costs in accordance with the terms of the lease, the applicant undertook to review the estimate on that basis.

26. The Decision

27. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
28. The Tribunal determines from the evidence before it that the applicant took all reasonable steps to undertake the replacement of the roof once it became apparent that a full replacement was the most economic way of dealing with the persistent leaks which had affected the leaseholder of Flat 103B over a period of years. Two objections were received and have been taken into account by the Applicant so that the estimated charges are in accordance with the respective leases and no prejudice to the lessees has been demonstrated. The Applicant explained that no other quotations were obtained because the contractor had a ten year agreement to carry out such works for the applicant; nevertheless in-house checks on the costs had been undertaken.
29. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted as no prejudice has been shown.

Name: Evelyn Flint

Date: 6 November 2023

RIGHTS OF APPEAL

1. 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.
2. 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>
3. 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.
4. 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.
5. 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.