



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

**Case reference** : **LON/00AG/LDC/2023/0084**

**Property** : **1-20 Trentishoe Mansions, 90 Charing  
Cross Road, London WC2H 0JE**

**Applicant** : **Cambridge Circle Ltd**

**Representative** : **Forsters LLP**

**Respondent** : **The Mayor and Burgesses of the London  
Borough of Camden (“Camden”) as  
headlessee and 10 individuals who hold  
long leases of flats from Camden (“the  
Leaseholder Respondents”)**

**Representative** : **Camden – did not file any objection  
The Leaseholder Respondents – Mr  
Terence Doyle**

**Type of application** : **Under section 20ZA of the Landlord &  
Tenant Act 1985 for the dispensation of  
consultation requirements provided for  
by section 20**

**Tribunal members** : **Judge Foskett  
Mr Kevin Ridgeway MRICS**

**Venue** : **On paper determination**

**Date of decision** : **16 October 2023**

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**DECISION**

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## **Decision of the tribunal**

- (1) The Tribunal grants dispensation pursuant to section 20ZA of the Landlord & Tenant Act 1985 (“the L&T Act 1985”) in respect of the Securing Works and the Repair Works (as defined below).

## **Background to the Application**

1. The Applicant is the freeholder of 24 Cambridge Circus, 115-119 Shaftesbury Avenue, 84-94 Charing Cross Road, 11a and 11b The Mall and 7 Caxton Walk, London, all registered at HM Land Registry under the title number NGL808327 (“the Property”).
2. Part of the Property known as 1-20 Trentishoe Mansions, 90 Charing Cross Road, London WC2H 0JE (“the Premises”) is demised to Camden by a 99-year lease dated 4 July 1979 and Camden’s leasehold interest is registered at HM Land Registry under title number NGL769768.
3. Camden has granted residential leases of flats at the Premises to 10 long leaseholders who are all Respondents to the Application (“the Leaseholder Respondents”). A schedule of notices of leases detailing all 10 leases is included in the Office Copy Entry of Camden’s leasehold title (NGL769768). A sample of one such lease is at page 290 of the e-bundle in relation to Flat 1 at the Premises.
4. The Premises is a building which looks from the photographs in the e-bundle to have been built around 1900. It includes a turret in the north-west corner.
5. The Tribunal has not been addressed by any party on the responsibility for carrying out the works which form part of the Application nor the ultimate responsibility for the costs of any works done. However:
  - (i) It appears to be agreed between the Applicant and Camden that, whilst the Applicant is responsible for carrying out the works described below, Camden is responsible for the costs;<sup>1</sup>
  - (ii) The Leaseholder Respondents appear to be potentially responsible to Camden for the cost of the works as service charge under the terms of their respective leases.<sup>2</sup>

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<sup>1</sup> See email exchange between the Applicant’s property manager and Camden’s Leaseholder Services representative dated 9 June 2022 at page 238 of the e-bundle.

<sup>2</sup> The Tribunal was not addressed on this point by the parties and makes no specific findings, but notes, for example, clause 2(3) of the sample lease in respect of Flat 1 at page 293 of the e-bundle.

6. In May 2022, the Applicant appointed surveyors, Calfordseaden Ltd, to carry out an external condition survey of the Premises and that inspection flagged up the need for the urgent erection of scaffolding around the turret due to “*possible collapse ... and the danger to the public*” (“the Securing Works”).<sup>3</sup>
7. In June 2022, the surveyors also advised the Applicant that the scaffolding should be used to facilitate access for inspections so that a more detailed condition report could be provided and the Premises made safe by further repair works (“the Repair Works”). The surveyors noted that “*... on the grounds of health and safety we advise that LB Camden be notified to undertake the works under a Dangerous Structures Notice*”.<sup>4</sup>
8. The erection of the scaffolding for the Securing Works started on 1 October 2022, without full section 20 consultation. The costs are unclear.
9. The Repair Works to the turret have not yet started. Quotations were received from 4 contractors as part of a proper tender process, the lowest of which was around £170,000 plus VAT. However, following further investigations, the figure has been revised up to around £293,000 plus VAT for the relevant works.
10. The Applicant made an Application under section 20ZA of the L&T Act 1985 on 31 March 2023 and applied to amend that Application on 27 July 2023 following further advice from the Applicant’s structural and civil engineers in a report of 8 June 2023.<sup>5</sup> The Applicant seeks:
  - (i) the retrospective dispensation of compliance with the consultation requirements set out in section 20 of the L&T Act 1985 in respect of the erection of the scaffolding to secure the turret as “qualifying works” (within the meaning of section 20ZA) at the Property (“the Securing Works”); and
  - (ii) the prospective dispensation of compliance with the consultation requirements in respect of the repair works to the turret as “qualifying works” (“the Repair Works”).
11. The Tribunal was satisfied that the 10 Leaseholder Respondents had been served with the relevant documents in this Application.<sup>6</sup> Five of the

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<sup>3</sup> See email from Calfordseaden to the Applicant’s property manager dated 25 May 2022 at 09.45, on page 96 of the e-bundle. The report following a site inspection on 31 May 2022 was produced on 14 June 2022 and is at page 115 of the e-bundle.

<sup>4</sup> See email of 1 June 2022 to the Applicant’s property manager at page 110 of the e-bundle.

<sup>5</sup> Page 169 of the e-bundle.

<sup>6</sup> Page 250 of the e-bundle (an email to the Tribunal from the Applicant’s solicitors, confirming service on the Leaseholder Respondents of the Application, the Grounds of the Application, the supporting documents and the 20 April 2023 directions); page 251 of the e-bundle (an email to

Leaseholder Respondents<sup>7</sup> have filed notices objecting to the Amended Application. Three of those Leaseholder Respondents nominating Mr Terence Doyle of Flat 18 as their spokesperson and adopted his submissions dated 5 May 2023 and 4 September 2023, although one of those Leaseholder Respondents (Mr Mason) also submitted via a representative an additional email of opposition. Mr Mark Quinlan of Flat 15 submitted his own response to the Amended Application on 14 September 2023.

12. Camden, which is named as a Respondent to the Application, has not submitted any objection.
  - (i) The Tribunal has seen correspondence from Camden's Leaseholder Services department in June and July 2022 indicating that the Applicant had told Camden that it intended to seek dispensation from section 20 requirements for the Securing Works.<sup>8</sup>
  - (ii) The Tribunal has seen an email from the Applicant's property manager dated 27 September 2022 to Camden's Leaseholder Services department stating that the Securing Works would start on 1 October 2022 and take approximately 3 weeks.<sup>9</sup>
  - (iii) On 2 February 2023, the Applicant served notice under section 20 on Camden for the Repair Works.<sup>10</sup> The Tribunal has not seen any response from Camden.

### **The hearing**

13. The Application was determined by the Tribunal on the papers. The Applicant's Application Notice stated that it would be content with a paper determination. Originally, two of the Leaseholder Respondents had requested an oral hearing,<sup>11</sup> but this has subsequently not been pursued.

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the Tribunal from the Applicant's solicitors, confirming service on the Leaseholder Respondents of the Applicant's Reply) to the statements in opposition; page 260 of the e-bundle (a sample letter sent by first class post and email to a Leaseholder Respondent serving the Amended Application, Amended Grounds and supporting documents) and pages 261 and 263 (confirmation sent to the Tribunal); page 264 (confirmation sent to the Tribunal of service of the Amended Reply to the statements of opposition).

<sup>77</sup> Mr Doyle (Flat 18); Mr Mason (Flat 9); Dr Thirion (Flat 20); Mr Bishop (Flat 12); Mr Quinlan (Flat 15).

<sup>8</sup> Pages 236-240 of the e-bundle.

<sup>9</sup> Page 241 of the e-bundle.

<sup>10</sup> Page 242 of the e-bundle.

<sup>11</sup> Dr Thirion; Mr Mason

14. In making its decision, the Tribunal took into account the information provided in an electronic bundle of 321 pages.

### **The issue**

15. It appears to be common ground between the parties that the works proposed by the Applicant would be subject to consultation requirements under section 20 of the L&T Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 on the basis that the costs would exceed the threshold of £250 per flat. By virtue of sections 20 and 20ZA of the L&T Act 1985, any relevant contributions would be limited to £250 unless the Service Charges (Consultation etc) (England) Regulations 2003 (“the Regulations”) were complied with or dispensation granted by the Tribunal.
16. The issue in this Application is whether it is reasonable to dispense with the consultation requirements.
17. As stated in the Tribunal’s original and Amended Directions, “*This application does not concern the issue of whether any service charge costs will be reasonable or payable.*”
18. Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under sections 19 and 27A of the L&T Act 1985 to determine the payability and/or reasonableness of any service charge under the relevant leases.

### **The Law**

19. 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.'*

20. The Supreme Court provided guidance on this section in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854:

(a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard.

[42]

(b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

(c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

(d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

(e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

(f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

(g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

(h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

(i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

21. An applicant can apply for dispensation in advance (*Daejan* at [56]) or retrospectively (the *Daejan* decision was itself an application for retrospective dispensation).

## **Findings**

22. For the following reasons, the Tribunal finds that there is cogent evidence adduced to show that in respect of both the Securing Works and the Repair Works there is urgency, that dispensation is justified, and that there is an absence of evidence of prejudice.

23. In relation to the Securing Works:

(i) The Tribunal accepts the assessment of the surveyors appointed in May 2022 that the Securing Works were urgent. There can be no suggestion that the Securing Works were an unnecessary service in the circumstances.

(ii) Whilst the Leaseholder Respondents are correct to point out that there was some delay between the issue being identified in May 2022 and the Securing Works being commenced on 1 October 2022, that does not demonstrate that the Securing Works were not urgent. The Tribunal accepts the evidence of the Applicant that the delays were caused by the need to obtain various consents and a licence relating to the scaffolding<sup>12</sup> but notes that the surveyor's assessment of the risks and the need for urgent work carries significant weight. It is extremely fortunate that none of the potential issues identified by the surveyor came to pass during the delay.

(iii) There is no evidence of relevant prejudice. The Tribunal notes the Leaseholder Respondents' assertion that cheaper alternative schemes might have been capable of being used, but:

(a) the Securing Works that were recommended and then carried out were in line with the surveyor's recommendations and designed by a scaffolding contractor who is a member of the National Access & Scaffolding Confederation;<sup>13</sup>

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<sup>12</sup> See the Grounds of the Amended Application at paragraphs 8-9 (page 31 of the e-bundle), which are verified by a statement of truth.

<sup>13</sup> See the Amended Reply at paragraph 13 (page 40 of the e-bundle), which is verified by a statement of truth.

- (b) there is no evidence from any respondent as to potential costs of alternative schemes to make the turret sufficiently safe;
- (c) there is no evidence that the extent, quality or cost of works were affected by the failure to comply with section 20.

24. In relation to the Repair Works:

- (i) Again, the Tribunal accepts the assessment of the surveyors that the Repairs Works are urgent.
- (ii) The Tribunal is surprised that the Applicant did not serve section 20 notices on Camden and the Leaseholder Respondents as soon as it became apparent that such a process was necessary, but notes that a truncated version of the process was set in train. Whilst this is plainly contrary to the requirements of the legislation, in light of the urgent nature of the works identified by the surveyor, it did give Camden and the Leaseholder Respondents some time to provide observations and nominate alternative contractors.
- (iii) There is no evidence from any respondent as to the potential costs of alternatives;
- (iv) The two key focusses of the Leaseholder Respondents' complaints are:
  - (a) the length of time the scaffolding has apparently sat idle;<sup>14</sup>
  - (b) alleged poor management of the building for over 5 years.<sup>15</sup>
- (v) However, there is no evidence that the extent, quality or cost of the Repair Works to be done will be affected by the failure to comply with section 20. Mr Doyle realistically accepts that there would be no point in a section 20 process occurring now and the work must be carried out<sup>16</sup> and Mr Mason's representative made essentially the same point in his objection.<sup>17</sup> To the extent that there are arguments about the payability or reasonableness of the costs incurred, those would be the subject of a different application to the Tribunal under sections 19 and 27A of the L&T Act 1985. In view of the urgency of the works (bearing in mind the surveyor's concerns as to the structural stability of the

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<sup>14</sup> See, eg, Mr Doyle's notice of objection at page 17 of the e-bundle.

<sup>15</sup> See, eg, Mr Doyle's second notice of objection at page 35 of the e-bundle.

<sup>16</sup> See Mr Doyle's notice of objection at page 17 of the e-bundle.

<sup>17</sup> See email at page 25 of the e-bundle: "*I feel the failure of serving notice should not impede the works, but I believe the failings should mean the landlord and/or Camden paying for the costs*".



Premises and the acceptance by at least two of the objecting Leaseholder Respondents that the works need to be carried out), there is no reason why dispensation should not be granted.

**Name:** Judge Foskett  
Mr Ridgeway

**Date:** 16 October 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).