



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

Case reference : **LON/00BJ/LDC/2023/0265**

Property : **Sherbourne Lodge, 211 Lower
Richmond Road, London, SW15 1HJ**

Applicant : **Topaz Investment Holdings Limited**

Representative : **Curchod & Co LLP**

Respondents : **(1) Mr D Hodges & Ms M Ibrahim
(2) Miss J Harris
(3) Ms S Churchman**

Type of application : **For dispensation from statutory
consultation**

**Tribunal
member(s)** : **Mr O Dowty MRICS**

**Date of
determination** : **24 January 2024**

DECISION

Decision of the Tribunal

The Tribunal grants the application for dispensation from statutory consultation in respect of the qualifying works.

The application

1. The applicant is the freeholder of the subject premises Sherbourne Lodge, 211 Richmond Road, London, SW15 1HJ. The property consists of a circa 1990s conversion of an older, mixed brick and concrete built building into 3 residential units.
2. The application, dated 20 October 2023, seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“The Act”) dispensing with statutory consultation in respect of qualifying works. At the time of that application, those works had not been carried out – however the Tribunal understands they have now been.
3. Directions were issued by the Tribunal on 10 November 2023. The Tribunal provided copies of those directions to the applicant and the respondents, alongside a copy of the application made.
4. The Directions of 10 November 2023 invited any leaseholders and sublessees who opposed the application to make submissions by 15 December 2023. No such submissions have been received by the Tribunal and the applicant has confirmed to the Tribunal that they have not received any other objections from the leaseholders.
5. The Tribunal considered that a paper determination of the application was appropriate, and the applicant indicated that they were content for this to happen in their application. The Tribunal therefore determined the matter on the basis of the papers provided to it without a hearing.
6. The Tribunal did not inspect the subject property as it was not necessary to do so to determine the present application.

The Qualifying Works

7. The applicant avers that there was a roof leak at the property, which severely affected the top floor flat and the loft space above. The applicant was concerned to “mitigate structural and internal damage (and potentially excessive costs) and complete repairs as soon as possible.”
8. The applicant had commenced a Section 20 process in relation to those works, providing a notice in their bundle dated 9 October 2023.

However, in a letter to the “flat owners” (which the Tribunal takes to mean the leaseholders) at the property dated 20 October 2023, the applicant said that, due to “recent sustained periods of heavy rainfall the damage to the roof space and internal areas of the top floor flat is substantially worse and it is imperative that repairs, albeit temporary, are undertaken as a matter of urgency”.

9. At the time the applicant’s letter of 20 October 2023 was sent, it was anticipated that the cost of arranging access to the roof, carrying out the necessary repairs and conducting a roof condition report would cost £3,000 plus VAT. In fact, as provided in an email from Karen Casey of Curchod & Co dated 20 November 2023, this cost appears to have increased – following a condition report dated 16 November 2023 by Mark Bithrey MRICS of MDB Chartered Surveyors - to a total of £4,452 including VAT for the scaffolding, the works themselves and surveyor’s costs to inspect the works once completed; as well as an additional £960 for the surveyor’s initial condition report. In that email, a summary of the works proposed by the surveyor and roofer is provided:

- 1. Remove the scaffold to the side elevation and erect an independent tubular scaffold tower to the left side of Draco Court with a platform to the top of the mansard with some boards laid onto the slate roof for safe access to the rear chimney stack of 211 Lower Richmond Road.*
- 2. Carefully remove the tiles around the chimney stack and set them aside for re-use.*
- 3. Remove the existing back gutter, cover flashing, side flashings and front apron and dispose of.*
- 4. Install new felt correctly lapped around the chimney.*
- 5. Install a code 5 lead back gutter to the rear of the chimney with a code 4 cover flashing.*
- 6. Install new code 4 lead side flashings and a front apron.*
- 7. Wedge all flashings and seal with lead sealant.*
- 8. Re-fit set aside tiles.*
- 9. Remove all redundant materials and leave clean on completion.*

Decision and Reasons

10. Section 20ZA(1) of the Act provides:

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.

11. The applicant's case, in essence, is that the qualifying works were works of repair, which were urgently needed to prevent water ingress from further damaging a flat and the loft space within the subject building.
12. The applicant provided, in its bundle, a copy of the surveyor's report on which the repairs were based. In addition, the applicant provided a significant amount of correspondence and other information regarding those works explaining why they were felt to be needed.
13. The applicant submitted that they had begun a section 20 process, and provided a notice to that effect, but due to the urgency of the repairs decided instead to apply for dispensation.
14. The Tribunal has not received submissions from any leaseholders or other interested parties objecting to the application or its contents and the applicant has confirmed they have not received any such objections either.
15. On the balance of evidence provided to the Tribunal, the Tribunal finds that it was appropriate to carry out the qualifying works without carrying out statutory consultation. These were urgent works of repair to remediate a leaking roof, and no leaseholder has objected to dispensation being granted.
16. The Tribunal therefore considers it reasonable to grant the application for dispensation from statutory consultation. No conditions on the grant of dispensation are appropriate and none are made.
17. This decision does not affect the Tribunal's jurisdiction upon an application to make a determination under section 27A of the Act in respect of the reasonable and payable costs of the works, should this be disputed by any leaseholder.

Name: Mr O Dowty MRICS

Date: 24 January 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).