



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

Case reference : **LON/00AH/LDC/2022/0136**

Property : **73 Norbury Crescent, London, SW16
4JT**

Applicant : **Foxglade Properties Limited**

Representative : **Michael Richards & Co**

Respondents : **Ms W Parris, Ms M Thompson, Mr M
Webb, Mr S Seesahai and Mr BZ
Mohungoo**

Representative : **n/a**

Type of application : **Application for dispensation from
consultation requirements under
S.20ZA of the Landlord and Tenant Act
1985**

Tribunal : **Judge N O'Brien**

Date of decision : **13th March 2024**

DECISION

Decision of the tribunal

- (1) The tribunal dispenses with the statutory consultation requirements in respect of the works set out in the application notice namely repointing the brickwork to the side elevation of the property.

The application

1. By application dated 28th July 2022, but not submitted to the Tribunal until 27th November 2023, made by the landlord's managing agent on behalf of the landlord, the applicant/landlord applies for dispensation from the statutory consultation requirements in respect of works carried out to the property in July 2022. The tribunal also received an additional application from the landlord's representative (reference LON/00AH/LDC/2022/0290) for dispensation from the consultation requirements in relation to additional works carried out to the same property in June 2022. That application is the subject of a separate determination.
2. Directions were given by the Tribunal on 13th December 2023 setting down the application for a paper hearing in the week commencing 11th March 2024.
3. By paragraph 1 of those directions the applicant was directed to send a copy of the application and the directions to each leaseholder by 3rd January 2024 and also directed to display a copy of the application in a prominent place in the property. By email dated 15 December 2023 the applicant's representative confirmed that a copy of the application and the directions had been sent to each leaseholder. By email dated 10th January 2024 the applicant's representative confirmed that the directions had been placed on a notice board in the property.
4. By paragraph 4 of the directions dated 13th December 2023 the applicant was directed to include in the bundle either copies of any replies from the respondent OR confirmation that there were no responses received. The bundle submitted by the applicant includes a written statement of case from an Oriana Pawlowska dated 26th February 2024 which states that no comments were received from any of the leaseholders regarding the s20ZA application. The application is therefore unopposed.

The background

5. The property which is the subject of this application is a converted block of 4 self-contained residential flats. It is believed that the property was constructed in the 1920s. It is not known when the building was converted into flats but the tribunal notes that the specimen lease attached to the application is dated 10th November 1988.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues.
7. The respondent leaseholders each hold a long lease of their respective flats. A specimen lease is included in the bundle. By clause 4(1) of that lease the landlord/applicant covenants to maintain the external walls and roofs of the property. By clause 3(i) of the lease the tenant covenants to contribute towards the maintenance costs by way of a variable service charge.
8. On 14th October 2020 the applicant issued a Stage 1 consultation notice to the leaseholders in relation to internal and external redecoration of the property and roof repairs. A copy of that notice is included at page 4 of the bundle. The applicant's agent subsequently invited 4 contractors to tender for the work, and a Stage 2 notice was issued to the leaseholders confirming the identity of the contractor and the cost of the works. A copy of the Stage 2 notice is included at page 7 of the bundle.
9. The works commenced in June 2022. In the course of the works the contractor informed the applicant's agent that additional emergency works were required to repoint the brickwork to the side of the property which had apparently deteriorated to the point that it was no longer watertight. The additional cost of those works was £4100. By letter dated 19th July 2024 included at page 13 of the bundle the Applicant's agent informed the leaseholders that the additional works had been undertaken and that as they were outside the scope of the original Stage 2 notice that an application would be made to the tribunal for dispensation from the statutory consultation requirements in respect of those additional works.
10. The tribunal notes that the works which are the subject matter of case reference LON/00AH/LDC/2022/0290 included the replacement of the roof over the ground floor bay window at a cost of £2350 and the addition of lead flashing to the main roof at an additional cost of £2100. That application is also unopposed. The total sum in relation to which dispensation is sought in respect of both applications is therefore £8550.

The Law

11. By virtue of section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 a landlord must comply with statutory consultation requirements before embarking on any works the cost of which exceeds £250 per leaseholder in any accounting period. Section 20ZA of the Landlord and Tenant Act 1985 provides that the tribunal may dispense with all or any of the consultation requirements in relation to any qualifying works if it is satisfied that it is reasonable to dispense with such a requirement.

12. When considering whether it is reasonable to retrospectively dispense with the consultation requirements the tribunal will focus on the extent, if any, to which the leaseholders have been prejudiced by the failure of the landlord to comply with the consultation requirements (see *Dejan Investments v Benson et Al* [2013] UKSC 14)

The tribunal's decision

13. The tribunal dispenses with compliance with the consultation requirement in respect of the works set out in the application. **This determination does not concern the issue of whether those service charges are reasonable or payable.**

Reasons for the decision

14. None of the leaseholders have objected to the application. According to the applicant the respondents never raised any objection to the additional works when they were initially notified of them in 2022. There is no evidence of any prejudice to the respondents if retrospective dispensation from the consultation requirements were granted.

Name: Judge N O'Brien

Date: 13th March 2024

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).