



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

Case reference : **LON/OOAD/LDC/2021/0104**

HMCTS code (paper, video, audio) : **V: CVP VIDEO**

Property : **87-89 and 89a Bexley High Street,
DA5 1JX**

Applicants : **Mr S K Mohindra, Mrs K Mohindra,
Mr C Bowry and Mrs K Bowry**

Representatives : **Mr Mohindra and Mr Bowry**

Respondent : **Mr A D Wilkinson**

Representative : **Ms Gill Abrahams**

Type of application : **To dispense with the requirement
to consult leaseholders**

Tribunal Member : **Judge N Hawkes
Mr S Mason BSc FRICS**

London Panel : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **15 November 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote determination was V:CVP VIDEO. A face to face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 145 pages, the contents of which we have noted. The order made is described below.

Decision of the Tribunal

Dispensation from the statutory consultation requirements is granted in respect of the cost of lowering the brick chimney stack (located at the rear of the two storey back addition to the Property) in height and temporarily weatherproofing it.

The application

1. By an application dated 13 April 2021, the Applicants have applied to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to 87-89 and 89a Bexley High Street, DA5 1JX (“the Property”).
2. The Tribunal has been informed that the Property comprises a retail menswear shop with a two-bedroom flat above it. The flat is known as 89A Bexley High Street (“the Flat”). The Respondent is the long lessee of the Flat and the Applicants are his landlord.
3. In their application, the Applicants state that they seek dispensation from the statutory consultation requirements in respect of “*essential and urgent chimney and roofs repairs replacements. This work commenced on 12 March 2021 and was completed 19 March 2021. Rendering of rear brick walls*”.
4. Directions of the Tribunal were given on 28 April 2021 and 9 July 2021.

The hearing

5. A video hearing in this matter took place on 12 November 2021. The Applicants were represented by Mr Mohindra and Mr Bowry at the hearing and the Respondent was represented by Ms Abrahams. Ms Abrahams was accompanied by Ms Marian Burke and by a witness for the Respondent, Mr Robin Dunnington. The Respondent did not himself attend the hearing.

6. The Tribunal heard oral evidence from Mr Dunnington. Although Mr Dunnington is a surveyor, no permission had been granted to the Respondent to rely upon expert evidence and Mr Dunnington's written evidence was not in the form of a formal expert report for the Tribunal. Accordingly, Mr Dunnington's evidence has been considered as evidence of fact rather than as expert evidence.
7. In addition to the material contained in the hearing bundle, the Tribunal was provided with a video prepared by the Applicants' contractors. Mr Dunnington confirmed that he had seen this video.
8. Following a short adjournment, the Applicants' representatives stated that the scope of the Applicants' application seeking dispensation is limited to the work which was carried out to the chimney stack at the Property. Prior to this adjournment, they had been asked to refer the Tribunal to any evidence in the bundle which they relied upon in support of any more extensive application.
9. Both parties raised issues which go beyond the scope of this application. The Tribunal stressed that we cannot provide either party with advice and that the parties may wish to seek independent legal advice.
10. At the conclusion of the hearing, the Applicants confirmed that they will not seek to require the Respondent to pay any costs of these Tribunal proceedings.

The Tribunal's determination

11. Section 20 of the 1985 Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met.
12. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
13. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
14. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
15. The power of the First-tier Tribunal to dispense with the statutory consultation requirements was considered by the Supreme Court in the leading case of *Daejan Investments Limited v Benson* [2013] UKSC 14.

16. The condition of the brick chimney stack located at the rear of the two storey back addition to the Property is shown in a photograph at page 56 of the Applicants' bundle. A number of bricks are displaced to the top courses, some with mortar missing. There is some cracking to the chimney stack brickwork below the projecting corbel detail.
17. Furthermore, the video referred to above shows the removal of a number of bricks from the top courses of the chimney stack by a builder who simply lifts the bricks out.
18. In our view, this demonstrates the failure of the mortar bonding the brickwork together. Having regard to the condition of the chimney stack shown in the photograph and on the video, we are not satisfied on the balance of probabilities that it is likely that this failure of the mortar affected only a few bricks, as was asserted on behalf of the Respondent.
19. In our view, it is likely that the condition of the rear addition chimney stack was such that it needed to be made safe as a matter of urgency in order to avoid the risk of loose bricks being dislodged and falling to the ground.
20. Having considered all of the evidence, we find that the urgent and essential work to make the chimney stack safe in respect of which dispensation should be granted comprised lowering the chimney stack in height and temporarily weatherproofing it as shown at page 23 of the Applicants' bundle. The further work to be undertaken to the chimney stack following completion of this urgent work to make the area safe should then have been the subject of a statutory leaseholder consultation.
21. It is not necessary for the purposes of this decision for the Tribunal to make a determination concerning whether or not the Applicants delayed in carrying out the urgent work which we find was needed to make the chimney stack safe.
22. Ms Abrahams did not submit that any condition should be attached to the grant of dispensation.
23. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge N Hawkes

Date 15 November 2021

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).