



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

Case Reference : **LON/00AH/LDC/2024/0033**

Property : **16 Elmwood Road Croydon CR0 2SG**

Applicant : **Mandy Thomson on behalf of Elmwood Road Trust**

Representative : **In Person**

Respondents : **Millicent L Grant, Jacqueline D Hutchins, Saira Butt.**

Representative : **In person**

Type of Application : **For dispensation from the consultation requirements under section 20ZA Landlord & Tenant Act 1985**

Tribunal : **Mr R Waterhouse BSc (Hons) LL.M Property Law MA FRICS**

Date of Decision : **6 June 2024**

DECISION

This has been a remote paper determination, which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, and no one requested same.

The documents the Tribunal were referred to were in a bundle of some 127 pages.

Decision

- (1) The Tribunal determines that unconditional dispensation should be granted from the consultation requirements from section 20ZA of the Landlord and Tenant Act 1985 (the Act) in respect of the property 16 Elmwood Road CR0 2SG**
- (2) We make no determination as to the reasonableness of the costs of same, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.**

The Application

- 1.** This Application was made on the 1 February 2024 by Mandy Thomson in the capacity of one of the shareholders of Elmwood Road Trust which owns the Freehold.
2. The Application seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985.
3. The Application is concerned solely with the question of what consultation if any should be given of the consultation requirements of section 20 of the 1985 for works costing in excess of £250 per flat. It is not concerned with the reasonableness or payability of any service charges which may arise.
4. The case was decided on paper and no appearances were made. The Tribunal considered the written bundle of 127 pages, in support of the Application. Millicent Grant, a leaseholder at the property, submitted a bundle of 12 pages.

Background

5. Directions were issued by the Tribunal on 19 February 2024 relating to an Application for dispensation of roof works amounting to £2950.00. The Directions required any leaseholders that opposed the Application to inform the Tribunal and the Landlord by the 18 March 2024, and that the landlord may make a brief Reply by 25 March 2024 and that the Applicant should provide the Tribunal with a bundle for hearing by 1 April 2024. The Directions also required the Applicant to serve a copy of the Directions on each of the leaseholders.

6. Amended Directions were issued on 5 April 2024, following a request by the Applicant to extend the dispensation request to include demolishing the chimney with a cost of £2300.00. Those opposing should notify the Tribunal by 19 April 2024, and the Applicant to make a brief reply by 19 April 2024 and the Tribunal bundle to be provided by 24 April 2024.
7. Amended Directions were issued on 9 April 2024, noting that the Applicant was one of the four leaseholders who owned the four leasehold properties within the building.
8. An Application for a Case Management Order was made on the 19 April 2024 by Millicent Grant requesting that the time to complete the Reply Form to oppose the Application be extended by 14 days.
9. A final set of Directions was issued on 22 April 2024 to extend the date to inform the Tribunal and Landlord of anyone who opposed the Application to 3 May 2024, with provision for the Applicant to make a reply by 17 May 2024 and the Tribunal bundle to be submitted by 24 May 2024.
10. The property which is the subject of this Application is a two-storey semi-detached Victorian house with extension converted into four flats. Each flat is owned by separate leaseholders.
11. The applicant in this case is the one of the leaseholders in the building.
12. This Application has been made because, quoting the Application form....
“water is pouring down through the ceiling and wall of one of the bedrooms in the top floor flat (Flat 3), because of defects to the roof and upper wall. The flat is currently rented to a family. The leak is so severe that objects placed on a table by the wall were soaked. We have obtained one quotation so far for £2950 which works out at £737.50 per leaseholder as an equal variable service charge is payable by all four leaseholders under the terms of the lease.”
13. The Application notes; “No formal section 20 consultation to date but reports from builders and roofers' quotes have been shared amongst all four leaseholders who are alone joint freeholders and they have been invited to nominate their own tradesmen.”
14. The Applicant later extended the dispensation request to include the demolition of a chimney at a cost of £2300.00 to be done at the same time as the original roof repair work.

15. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **This Application does not concern the issue of whether any service charge costs will be reasonable or payable.**

Documents

16. By an email dated 19 April 2024 submitted to the Tribunal copied to the Applicant, Millicent Grant, the leaseholder of Flat 4, registered their objection to the dispensation Application. Submitting, they felt the Application was premature, and unnecessary.

The Tribunal's determination

17. We are, aware of the judgment in Daejan Investments Limited v Benson and others [2013] UKSC 14. The Application for dispensation is not challenged.
18. The Supreme Court (Lord Neuberger at para 50) accepted that there must be real prejudice to the tenants. Indeed, the Respondents do not oppose the Application. It is accepted that we have the power to grant dispensation on such terms as we think fit. However, the Landlord is entitled to decide the identity of the contractors who carry out the work, when they are done, by whom and the amount. The safety net for the Respondents is to be found in sections 19 and 27A of the Landlord and Tenant Act 1985.
19. The court came to the following conclusions:
 - a. The correct legal test on an Application to the Tribunal for dispensation is:

“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.

d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

f. The onus is on the leaseholders to establish:

i. what steps they would have taken had the breach not happened and

ii. in what ways their rights under (b) above have been prejudiced as a consequence.

20. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

21. The Tribunal was of the view that they could not find significant relevant prejudice to the tenant/respondents.

22. The Tribunal notes the concern and objection of the Millicent Grant. The ingress of water to a roof is an acute issue particularly for the occupant of the premises immediately below the roof. Accordingly, we find that unconditional dispensation for both the roof work and the chimney work should be granted, under section 20 ZA of the Landlord and Tenant Act 1985 and the Service Charge (Consultation) (England) 2003. In making our decision we have borne in mind the quotes which we were referred, which in our finding clearly indicate that works are required at the Property. The extension of the dispensation to include the removal of the chimney logically forms part of the same works to make the building watertight.

20. Our decision is in respect of the dispensation from the provisions of s20 of the Act only. **Any concern that a Respondent, whether they objected to the Application or not, has as to the standard of works, the need for them and costs will need to be considered separately by separate Application and their position is not affected by our decision on this Application.**

Richard Waterhouse

**Name: Richard
Waterhouse LLM
FRICS**

**4 June
2024**

ANNEX – RIGHTS OF APPEAL

- 1. 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 at the Regional Office which has been dealing with the case.**
- 2. 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.**
- 3. If the application is not made within the 28-day time limit, such application must include a request to 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.**
- 4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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**