



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

Case Reference : **LON/00AP/LDC/2023/0294**

Property : **The Copse, Fortis Green, London,
N2 9HL**

Applicant : **Zeus Properties Limited**

Respondents : **Various Leaseholders The Copse,
Fortis Green, London, N2 9HL**

Type of Application : **Dispensation from consultation
requirements under Landlord and
Tenant Act 1985 section 20ZA**

Tribunal Members : **Judge Professor R Percival**

Venue : **Remote paper determination**

Date of Decision : **7 May 2024**

DECISION

Decisions of the tribunal

- (1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”), grants dispensation from the consultation requirements in respect of the works which are the subject of the application.

Procedural

1. The landlord submitted an application for (apparently) retrospective dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the regulations thereunder, dated 20 November 2023.
2. The Tribunal initially gave directions on 10 January 2024, and then amended directions on 15 March 2024, following an application by the Applicant for an extension of time. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 12 April 2024.
3. The Applicant confirmed that the relevant documentation had been sent to the leaseholders.
4. No response from any of the leaseholders has been received by the Tribunal. The Applicant confirmed that no responses had been received by it.

The property and the works

5. The property is a purpose built block of 12 flats.
6. The works relate to a boundary wall between the property and a neighbour. The Applicant relies on the explanations provided in the application form itself and in a notice of intention to carry out works and a notice of estimates received included in the bundle, with some associated documents. While strictly the directions did not require a narrative statement (the directions refer to “any” such statement being supplied in the bundle), in the circumstances of this case it would have been helpful if one had been provided.

7. It appears that the boundary wall, or at least a section of it, had become unstable and was falling into a neighbouring property – in the application form, the agent states that it was leaning against the neighbouring house. This passage goes on to say that the neighbour had taken legal advice and was threatening litigation. One of the documents in the bundle refers to a demand that the neighbour pay 50% of the costs of what appears to be a temporary structure for the purposes of undertaking the work (see below, paragraph [10]), but there is no clear explanation of legal responsibility for the wall in the documents provided.
8. The managing agent served a notice of intention on 15 September 2023, and a notice of estimates on 25 October 2023. The explanation for seeking dispensation in the application form refers to the effect of recent heavy rain on the wall, such that it had become more unstable, creating a risk of immediate collapse with associated risks to the health and safety of, presumably, the residents of both The Copse and the neighbouring property.
9. The solution adopted was to remove the defective part of the wall and replace it with a timber fence attached to concrete posts. The Applicant received two quotations, one from a company called Pyramid Solutions Ltd for £4,900, and one from Building Spaces for £5,850, (exclusive of VAT).
10. The application form states that the work had already been undertaken. However, an email dated 26 April 2024 from a construction consultant refers to what appears to be a dispute with the neighbour in relation to paying for a temporary timber strut to one end of the wall, and goes on to reference a ten day window agreed with a building control officer, which at least suggests that the work was not undertaken until very recently. Again, the lack of a clear written narrative makes it difficult to be clear as to what has taken place, and when.
11. The costs provided in the quotations do not appear to include the costs of the consultant, or the timber strut, referred to above.

Determination

12. The relevant statutory provisions are sections 20 and 20ZA of the Landlord and Tenant Act 1983, and the Service Charges (Consultation etc)(England) Regulations 2003. They may be consulted at the following URLs respectively:

<https://www.legislation.gov.uk/ukpga/1985/70>

<https://www.legislation.gov.uk/uksi/2003/1987/contents/made>

13. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 and the regulations.
14. It appears from the description of the works set out in the application form that some urgency was evident (and so the consultation process was truncated, even though significant steps had already been taken). However, given the contradictory indications referred to above, it is not clear if the urgency did result in work being carried out (or at least started) by the time the application was sent to the Tribunal, as the application form states, or much later, as the email from the consultant implies.
15. But in any event, no response has been received from any of the leaseholders objecting to the application, either by the Tribunal or, it reports, the Applicant. It is therefore clear that none of the leaseholders have sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from any question of urgency, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
16. Neither the application nor the notices refer to the removal of a sycamore tree which was subject to a tree preservation order on the boundary. The bundle contains an application to fell the tree, on the basis that it is causing damage to the wall, identifying the agent as G & R Tree Surgeons; and a notice from the local authority dated 11 July 2022 recommending allowing the application (but no determinate notice accepting the recommendation). I assume that these documents are included by way of background. In case there is any doubt, they do not form part of the application, and the cost of felling the tree is not included in the work package to which this dispensation applies.
17. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Rights of appeal

18. 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 London regional office.

19. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
20. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
21. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Prof Richard Percival **Date:** 7 May 2024