



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

**Case reference** : **LON/00AT/LDC/2024/0109**

**HMCTS code** : **P: PAPERREMOTE**

**Property** : **Flats 1 – 16 Algar Close, Isleworth, TW7  
7AQ**

**Applicant** : **Isleworth Estate Limited**

**Representative** : **Gregsons Solicitors  
Ref: AAA/5760**

**Respondent** : **Various leaseholders of Flats 1 – 16  
Algar Close, Isleworth, TW7 7AQ**

**Type of application** : **Application to dispense with statutory  
consultation requirements under  
section 20ZA of the Landlord and  
Tenant Act 1985**

**Tribunal members** : **Judge Tueje  
Mr A Fonka FCIEH CEnvH MSc**

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

**Date of decision** : **22<sup>nd</sup> July 2024**

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of the remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

## **Decision of the Tribunal**

*In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.*

- (1) The Tribunal grants retrospective unconditional dispensation pursuant to section 20ZA in respect of works to eliminate the danger of the collapse of a boundary wall leaning into the alleyway between Byfield Road and Algar Close, Isleworth. These works include demolishing the said wall, and cost £59,365.00 plus VAT.
- (2) This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or cost of the subject works.

## **The Application**

1. This Application under section 20ZA, is dated 28<sup>th</sup> March 2024, and seeks dispensation from the statutory consultation requirements in respect of the above-mentioned works required at the Property.

## **Background**

2. The Applicant owns the freehold of Flats 1-16 Algar Close, Isleworth, TW7 7AQ (the "Property"). The Property is a two-storey purpose built residential block comprising 16 flats.
3. The Respondents are the leasehold owners of the flats within the Property. The Applicant is also the leasehold owner of 7 of the flats comprising the Property.
4. The Property is managed by Ernle Estates, a parent company of a group of companies that includes Krane Property Services Limited. From time to time, Mr Dominic Ebbans of Ernle Estates has dealt with repairs and maintenance in connection with the Property. Mr Ebbans is also a director of Krane Property Services Limited.
5. The Application relates to the boundary wall to the alleyway between Byfield Road and Algar Close which was in danger of collapsing. By a letter dated 14<sup>th</sup> March 2024 the London Borough of Hounslow required the Applicant carry out works to eliminate this danger.
6. In a letter dated 22<sup>nd</sup> March 2024, Krane Property Services sets out details of the work required and the cost, which is £59,365.00 plus VAT. These works (the "Works") include:
  - To supply and erect fencing, and temporary braces where required, to ensure a safe working area;
  - Labour, plant and machinery to demolish the wall, including those sections of the wall that need to be demolished by hand;

- To remove a raised planter to allow for complete demolition of the wall;
  - To remove all bushes and shrubbery on the inside of the wall; and
  - To remove an estimated 200 tonnes of debris and waste materials from the site.
7. On 27<sup>th</sup> March 2024 the Applicant wrote to leaseholders informing them of the need to carry out the Works, the approximate cost, the name of the contractor, and that the section 20ZA Application would be made.
  8. As stated, the Application is dated 28<sup>th</sup> March 2024, seeking dispensation on the following grounds:
 

*On or about 18 March 2024 the landlord received a letter from the local authority bringing to their attention that a boundary wall to the property was in danger of collapse and that a dangerous [sic] structure notice was to be served requiring the execution of works to remove the danger. The works will require the demolition of the wall at a cost of £59,365 plus VAT*
  9. The Works began on 8<sup>th</sup> April 2024. In an e-mail sent to Hounslow on 29<sup>th</sup> April 2024, the Applicant's managing agent confirmed the Works had been completed.
  10. On 8<sup>th</sup> May 2024 the Tribunal made directions in respect of the Application, including providing an opportunity for the Respondents to object to the Application.
  11. The joint leasehold owners of Flat 7 Algar Close, TW7 7AQ raised a number of objections to the Application. They stated the Applicant has neglected the block and maintains poor communication with leaseholders.
  12. As to the Works to remove the dangerous wall, their objections included the following:
 

*Isleworth Estates Limited/Ernle Estates were negligent in their inspection and upkeep of the block, resulting in both the worsening of the wall, and the sudden need for a quick remedy.*

*Isleworth Estates Limited/Ernle Estates is attempting to avoid soliciting quotes to offer work to their preferred supplier: a supplier who is not independent from Ernle Estates.*
  13. In its Reply dated 18<sup>th</sup> June 2024, the Applicant addresses the allegation that negligence contributed to the worsening of the wall as follows:
 

*The wall partially collapsed due, it appears, to months of excessive rainfall. The mortar being old and a little stuffed, could not withstand the impact of so much rain. It has twisted over time and it may well have been a combination of factors which made the wall dangerous.*

14. The Applicant addresses the extent of any connection with Krane Property Services Limited: it states Mr Ebbans is connected to both Ernle Estates and Krane Property Services Limited.

### **The Determination**

15. In making its decision, the Tribunal took into account the information provided by the Applicant by way of an indexed paginated bundle comprising 166 pages.

### **The Legal Framework**

16. So far as is relevant, section 20 states:

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-*

- (a) Complied with in relation to the works or agreement, or*
- (b) Except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*

*(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*

*(3) This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*

17. Section 20ZA(1) continues:

*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 agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

18. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

18.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.

- 18.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord's failure to comply with the requirements under section 20.
- 18.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.
- 18.4 The Tribunal's main focus on such applications is what prejudice, if any, have leaseholders suffered.
- 18.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.
- 18.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.
- 18.7 If appropriate, the Tribunal may grant conditional dispensation.

### **The Tribunal's Approach to the Evidence**

19. The Tribunal reached its decision after considering the documents in the bundle, and taking into account its assessment of that evidence.
20. This determination does not refer to every matter raised, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was relevant to a specific issue, it was considered by the Tribunal.

### **The Tribunal's Decision**

21. The Tribunal grants unconditional dispensation pursuant to section 20ZA in respect of the Works costing £59,365.00 plus VAT.

### **The Tribunal's Reasons**

22. The Tribunal has had regard to the nature of the works and finds the works were necessary. The local authority informed the Applicant that the wall was in a dangerous condition due to the risk of collapse, and that the local authority would serve a dangerous structure notice, carry out a survey and execute the necessary works unless the Applicant removed the danger. Therefore, the Tribunal considers these works were urgent and necessary for health and safety grounds.
23. The Tribunal takes into account that when leaseholders were notified about the Works and the Application, except for the leaseholders of one of the flats, none of the other leaseholders objected.
24. The Tribunal has taken into account those objections to the extent that they are relevant to the Works that are the subject of this Application. The

Tribunal notes that the main relevant objection concerns the appointed contractor, which it's said is not independent of the Applicant or the managing agents.

25. We have balanced those concerns against the urgent need to carry out the Works. The Tribunal notes that to the extent the identity of the contractor has affected the cost, the Respondents may apply for a determination under section 27A.
26. The Respondents who object do not do so on the grounds that the standard of works carried out would be affected if dispensation is granted.
27. On balance, we have concluded that the urgent need for the Works to avoid danger to residents and the general public, justifies granting dispensation.
28. By the directions order dated 8<sup>th</sup> May 2024, the leaseholders were afforded an opportunity to object to this application; we note the majority raised no objection. Therefore, the Tribunal proceeds on the basis that most leaseholders have no objections to the application, and that there has been no relevant prejudice to those leaseholders who did not object, because it's likely they would have objected to the application if they considered they would be prejudiced.
29. For the reasons stated at paragraphs 22 to 28 above, the Tribunal is satisfied that it is appropriate to grant dispensation from the consultation requirements bearing in mind the Supreme Court decision in ***Daejan Investments Limited v Benson and others [2013] UKSC 14***.

**Name:** Judge Tueje

**Date:** 22<sup>nd</sup> July 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).