



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

Case reference : **LON/00BD/LDC/2024/0016**

Property : **Onslow Avenue Mansions, Onslow Avenue, Richmond, London, TW10 6QD**

Applicant : **Onslow Avenue Mansions Limited**

Representative : **Steven Du, Senior Property Manager, Faraday Property Management**

Respondents : **Residents of Onslow Avenue Mansions**

Type of application : **For dispensation under section 20ZA of the Landlord & Tenant Act 1985**

Tribunal members : **Tribunal Judge B MacQueen
Ms F MacCloud, MCIEH**

Date of hearing : **22 April 2024**

Date of decision : **29 April 2024**

DECISION

Decision of the Tribunal

1. At the hearing, the Applicant applied orally to withdraw the application for dispensation under section 20ZA of the Landlord & Tenant Act 1985. The Tribunal consented to this withdrawal (Rule 22(1)(a) and (3) Tribunal Procedure Rules 2013).
2. The Tribunal will notify parties of this withdrawal by arranging for a copy of this decision to be sent to all parties. (Rule 22(7) Tribunal Procedure Rules 2013).

The Background

3. Onslow Avenue Mansions (the Property) was described as a four-storey brick-built building, built around 1905, which included 32 apartments. The Applicant was the freehold owner and the Respondents were leaseholders.

The Application

4. On 15 January 2024, the Applicant made an application pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation of the consultation requirements in respect of:

“restoration of existing floor slab structure underneath Flat 9 due to the deterioration of the concrete slab below the floor surface resulting in the floor surface being unstable and not horizontal.”
5. The application stated that investigations had shown that there were voids underneath the slab which required specialist treatment. The Applicant stated that they planned to carry out this work as soon as possible.

6. On 28 February 2024 the Tribunal made directions which included a requirement that the Applicant, by 8 March 2024, send to each of the leaseholders (and any residential sublessees) and any recognised residents' associations, copies of the application and a brief statement to explain the reasons for the application, and also to display a copy of the directions in the common parts of the Property.
7. The directions required leaseholders and sublessees who opposed the application to complete the reply form attached to the directions and email it to the Applicant and the Tribunal by 19 March 2024.
8. The Tribunal received reply forms from a number of leaseholders, who requested an oral hearing. The matter was therefore listed for an oral hearing on 22 April 2024.

The Hearing

9. Mr Steven Du, Senior Property Manager of Faraday Property Management and Building Surveyors, appeared on behalf of the Applicant.
10. Peter O'Brien, the long leaseholder of flat 9, James Sinfield of flat 7 and Yves Dermaux of flat 31 appeared as Respondents to the application.
11. The Tribunal had before it a bundle of documents totalling 121 pages (the Bundle) which was provided by the Applicant. This included a quotation dated 7 September 2023 from Geobear, and a report dated October 2023 completed by CSP, Civil and Structural Engineers

(instructed by Peter O'Brien). Also included within the Bundle were the reply forms completed by the Respondents.

12. On 10 April 2024, James Sinfield made a written application to the Tribunal to seek permission to adduce further documents that supported the submission he had already made to the Tribunal which was dated 17 March 2024. The additional documents were produced in hard copy at the hearing and consisted of 18 pages. The Applicant and other Respondents present at the hearing did not object to the additional documents being included. The Applicant and Yves Dermaux had already been sent a copy prior to the hearing date. Peter O'Brien was given a copy at the hearing and did not object to the documents being before the Tribunal.

13. The Tribunal considered Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and found that the inclusion of the additional documents meant that the James Sinfield would be able to participate fully in the proceedings. The Tribunal ensured that all parties had had sight of the documents and had had time to read them and on being satisfied of that allowed the additional documents to be included.

Representations on Behalf of the Applicant

14. The Applicant told the Tribunal that a section 20 consultation process in relation to the works, the subject of this application, had begun on 15 December 2023, but that the Applicant had also made this application to the Tribunal for dispensation in parallel. The Applicant confirmed that this application for dispensation had been made for two reasons,

namely Geobear appeared to be the only viable contractor to undertake the works and the dispensation was requested to quicken the process.

Representations on Behalf of Respondent

15. Peter O'Brien sought permission to show to the Tribunal an email dated 18 April 2024 that he had sent to James Sinfield and Yves Dermaux. The Applicant did not object and the Tribunal allowed the email to be included as it enabled Peter O'Brien to articulate to the Tribunal his position. Peter O'Brien confirmed that the email set out what he was hoping to achieve at the Tribunal hearing. In particular, to ask the Tribunal to lay down steps to be taken to fully identify the works that were required and to produce a programme for these works.

16. Peter O'Brien took the Tribunal to the report of CSP, the structural engineers he had appointed. At page 83 of the bundle, the report confirmed that recommendations from the structural engineers appointed by the freeholders preceded the testing that had been completed, and therefore CSP recommended that the structural engineers' comments on the probe results were sought. The report concluded that if the window sampling holes revealed no major voids, then the proposal to inject material under pressure appeared to be a reasonable course of action.

17. It was Peter O'Brien's position that a review of all test results and reports was therefore needed. Further investigation could then be completed so that the works recommended would be appropriate and effective. Following this work, Peter O'Brien believed that a specification of works should be drawn up so that quotes could then be obtained.

18. James Sinfield confirmed the content of his statement dated 17 March 2024. He confirmed to the Tribunal that he felt that the exact nature of the works had never been fully explained to the leaseholders. In particular, no quotations had been included for the works for which this dispensation application had been made. The tenants therefore did not know the necessity, extent or the cost of the works.
19. Yves Dermaux confirmed that he agreed with what James Sinfield had told the Tribunal.
20. In light of the representations made, the Tribunal adjourned the hearing to give the parties the opportunity to discuss the matter. When parties returned, the Applicant confirmed they wished to withdraw their application for dispensation. All parties accepted that a specification of the works needed to be prepared so that it was clear what works were required and the cost of these works.
21. The Tribunal consented to the Applicant withdrawing their application for dispensation. The Tribunal found that the purpose of section 20 of the Act was to ensure that tenants were not prejudiced given that the consultation process kept tenants informed of the need, scope and estimated cost of proposed works, and gave them the opportunity to comment.
22. The Tribunal also noted the statutory protection of section 19 of the Act, which preserves the tenants' right to challenge actual costs incurred by making a separate service charge application to this Tribunal under section 27A of the Act.

23. The only matter before the Tribunal was whether or not dispensation should be granted and that application had been withdrawn. The Tribunal's involvement in this matter was therefore at an end. With that said, the Tribunal noted that the Applicant confirmed they would clearly specify to tenants the works that were required so that the tenants may fully participate in the consultation process. The Tribunal also encouraged the Applicant to act promptly to bring this matter to a satisfactory conclusion given the impact any uncertainty would have on the Respondents, including the delay to flat 9 being occupied.

Name: Tribunal Judge
Bernadette MacQueen **Date:** 29 April 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).

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

22.— Withdrawal

- (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—
 - (a) orally at a hearing; or
 - (b) by sending or delivering to the Tribunal a written notice of withdrawal.
- (2) A written notice of withdrawal must—
 - (a) be signed and dated;
 - (b) identify the case or part of the case which is withdrawn;
 - (c) state whether any part of the case, and if so what, remains to be determined;
 - (d) confirm that a copy of the notice of the withdrawal has been provided to all other parties and state the date on which this was done;
 - (e) include the written consent of any of the other parties who have consented to the withdrawal.
- (3) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.
- (4) The Tribunal may make such directions or impose such conditions on withdrawal as it considers appropriate.

- (5) A party which has withdrawn its case may apply to the Tribunal for the case to be reinstated.
- (6) An application under paragraph (5) must be made in writing and be received by the Tribunal within 28 days after—
- (a) the date of the hearing at which the case was withdrawn orally under paragraph (1)(a); or
 - (b) the date on which the Tribunal received the notice under paragraph (1)(b).
- (7) The Tribunal must notify each party in writing of a withdrawal under this rule.
- (8) Any party may, within 28 days after the date of receipt of notification by the Tribunal under paragraph (7), apply for a case, or part of a case, which has been withdrawn under this rule to be re-instated.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) 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 the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.