FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LDC/2024/0086**
Property	**:**	**91 Hammersmith Grove, London, W6 0QN**
Applicant	**:**	**Southern Land Securities**
Representative	**:**	**Warwick Estates (Hailey Bull)**
Respondents	**:**	**Mrs Priya Worthington** **Mr Jamel A Khayatt** **Mrs Iva Dyer** **Mr Matthew James Patrick O'Connor &** **Ms Hannah Jones**
Type of application	**:**	**Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Robert Latham** **Appollo Fonka FCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**11 September 2024**

DECISION

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 in respect of urgent works to the outside wall of the first floor flat without

condition. The Applicant provided a quotation from Oncall, dated 16 February 2024, for the works in the sum of £1,500.

The Application

1. By an application, dated 28 March 2024, the Applicant applies for dispensation from the statutory duty to consult. The application has been issued by Warwick Estates, the managing agent for the landlord. The application relates to 91 Hammersmith Grove, London, W6 0NQ. The premises are described as a "residential block of 4 flats". However, it is apparent to the tribunal that there are shop premises on part of the ground and basement floors.

2. The Respondents to this application are the four leaseholders: (1) Mrs Priya Worthington (Basement and ground floor flat); (2) Mr Jamel A Khayatt (Second Floor Flat); (3) Mrs Iva Dyer (Third Floor Flat); and (4) Mr Matthew James Patrick O'Connor & Ms Hannah Jones (First Floor Flat.

3. The statutory duty to consult is part of the statutory armoury to protect leaseholders from paying excessive service charges. Section 20 of the Landlord and Tenant Act 1985 imposes an obligation on a landlord to consult where the relevant contribution of any leaseholder will exceed £250. There are circumstances where works will be urgent and will preclude a landlord from embarking upon the full statutory consultation procedures which will take several weeks. In such circumstances, section 20ZA of the Act permits a landlord to apply for dispensation. However, this Tribunal still expects a landlord to follow the spirit of the legislation, consulting to the extent that time permits and seeking to secure best value is secured by testing the market. In a case of emergency, the landlord would be expected to proceed with the works and seek retrospective dispensation. This Tribunal has standard procedures for dealing with dispensation applications. However, these only work if a landlord provides accurate information and complies with the Directions given by the Tribunal.

4. The application form requires the landlord to specify the following:

   (i) The grounds for seeking dispensation: The Applicant states: "Works required to the outside wall of First Floor Flat 91 Hammersmith Grove, brickwork to be repointed, clear all moss and rubbish from window sill, fill all void cracks with cement were required. Works required due to leak being caused to the flat, and damp is also present as a result".

   (ii) Any Consultation that has been carried out or is proposed to be carried out: The Applicant states: "none".

(iii) Why the applicant is seeking dispensation with all or any of the consultation requirements: The Applicant states: “works exceed section 20 threshold”.

(iv) Whether there are any special reasons for urgency: The Applicant states “no”. The Applicant does not ask for the case to be allocated to the fast track.

5. The Applicant provided a quotation from Oncall, dated 16 February 2024, for the works in the sum of £1,500 (inc VAT). The quote expired on 17 March 2024. The Applicant did not indicate whether the works had been put in hand.

6. The application form requires an applicant to provide a copy of a relevant lease. The Applicant provided a copy of a lease for the Second Floor Flat dated 27 October 2006. However, this merely extended the original lease dated 18 October 1979. The original lease was required if the Tribunal was to satisfy ourselves as to the respective obligations of landlord and tenant.

7. On 7 May 2024, the Tribunal issued Directions. On 8 May, the Tribunal sent a copy of the application and the Directions to the parties. The Directions stated that the Tribunal would determine the application on the papers, unless any party requested an oral hearing. No party has done so. Any leaseholder who objected to the application was directed to complete a form and return it to the Tribunal and to the Applicant. No leaseholder has objected.

8. By 18 June 2024, the Applicant was directed to serve a bundle of documents which was to include the following: (i) the application form and accompanying documents, (ii) the directions, (iii) any statement to explain the reasons for the application, (iv) any relevant documents and correspondence and (v) a specimen lease.

9. On 8 June 2024, the Applicant filed a Bundle of 38 pages. It included the application form, directions and the quote. The lease, dated 15 August 2002, seems to relate to the whole of the property, excluding the lock-up shop on the ground and basement floors. It is therefore not a lease pursuant to which any of these Respondents occupy their flats. No statement was provided as to whether the works have been executed, what communication there has been with the leaseholders or what steps have been taken to test the market by obtaining more than one quotation.

10. On 22 August 2024, the case was reviewed by a Procedural Judge whose views were communicated to the Applicant:

> "On the information currently provided in this application, if it came before me, I would dismiss it. The Applicant needs to state why, in the case of routine, non-urgent works, there has been no consultation and seemingly no tendering/different quotes for the works."

11. On 28 August 2024, the Applicant responded:

> "From looking into this further, I can only offer our apologies here that the urgency of this was not indicated on the application at the time, however as the damp and water ingress was affected the property, we felt that this was deemed as a health & Safety issue, especially due to the time of year in which this incurred where the temperatures were low and of course heavy rains continuing. See attached the photos also. There was no consultation carried out as we felt the present of mould and water ingress affecting the flat could not wait for a section 20 consultation to be carried out."

12. This response is not satisfactory. The Tribunal still does not know whether the works have been executed. At the very least, the Applicant could have notified the leaseholders that these urgent works were to be executed. The Applicant fails to address the question as to whether it had tested the market by seeking a second quote.

13. Section 20ZA (1) of the Act provides:

> "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 long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

14. The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.

15. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. This is justified by the urgent need for the works. There is no suggestion that any prejudice has arisen.

16. However, this application has been far from satisfactory. It is unclear whether these urgent works have been executed. The Tribunal hopes that they have. There seems to have been no communication with the leaseholders and no attempt to test the market. These matters would be

relevant were any leaseholder to challenge the reasonableness of the cost of the works when they are charged for them.

17. The preparation of this application falls below the standard that the Tribunal is entitled to expect. The Tribunal has considered whether it should make it a condition of the dispensation that none of the costs relating to this application should be passed on to the leaseholders through the service charge. On this occasion, the Tribunal has decided not to do so. However, if the Applicant is to pass on any such costs to the leaseholders, it must ensure that they are reasonable.

18. The Tribunal will send a copy of this decision to the Applicant and the Respondents.

Judge Robert Latham
11 September 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 **by e-mail** 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).