



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

Case Reference	:	LON/00AG/LDC/2024/0190
Property	:	19 Frognal, Hampstead London NW3 6AR
Applicant	:	19 Frognal Limited
Representative	:	Warwick Estates (Kelsey Hindlaugh)
Respondent	:	The leaseholders of the 13 flats at the Property
Representative	:	None
Type of Application	:	An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from consultation prior to carrying out works
Tribunal Members	:	Mr I B Holdsworth FRICS
Date of Decision	:	13 November 2024

DECISION

Decisions of the Tribunal

The Tribunal determines that retrospective dispensation should be given from the consultation requirements in respect of the works to remedy damp and timber rot (the “**Damp Repair works**”) at the property 19 Frognal, Hampstead, London NW3 6AR as required under s.20ZA of the Landlord and Tenant Act 1985 (“**the Act**”) for the reasons set out below.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27a of the Act.

The Tribunal directs the Applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the buildings.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the statutory consultation requirements associated with carrying out Damp and timber remediation works at 19 Frognal, Hampstead, London NW3 6AR (the “**property**”).
2. An application was received by the First-tier Tribunal dated 19 June 2024 seeking retrospective dispensation from the consultation requirements. Directions were issued to the Applicant on 25 September 2024.
3. The Directions required the Applicant to advise the Respondents of the application and provide them with details of the proposed works including costs.
4. The relevant legal provisions are set out in the Appendix to this decision.

Parties’ submissions

5. This matter was determined by written submissions. The Applicant submitted a bundle of relevant materials to the Tribunal.
6. No submissions were received from any Respondent.

The background

7. The property which is the subject of this application comprises a three/four storey purpose built block of 13 flats. The Tribunal are given limited information about the defects to which the application relates, and the scope of work undertaken. The Tribunal has deduced that works were carried in early 2024 to remedy dampness and rotten timber at the property. This application seeks retrospective dispensation from the statutory consultation for these works.
8. No statement of case is submitted by the managing agent Warwick Estates Limited. The reason given for the application is “*works instructed by client and the invoice exceeds section 20 limit*”. No stage 1 consultation was carried out with the leaseholders prior to undertaking the works.
9. The Tribunal is provided with a single invoice from Mansbridge estates in the sum of £16,650.14. It is not shown on the invoice whether this sum is inclusive or exclusive of vat. The invoice states “*Kenwood Damp proofing*” . It is not known whether this is the cost of all the Damp Repair works.
10. The Applicant contends that the Damp Repair works were needed and undertaken by the Directors of 19 Froggnal Limited. These works were done without the knowledge of the managing agent. An e mail dated 28 October 2024 from the managing agent confirmed they had complied with the Directions and had contacted the leaseholders about the application. Ms Kelsay Hindlaugh of the managing agent confirmed, “*we have not received any completed {sic Reply Forms} forms from the leaseholders*”
11. This determination relies upon a bundle of papers which included the application, the Directions and copy of a specimen lease.
13. The only issue for the Tribunal to consider is whether it is reasonable to dispense with the statutory consultation requirements in respect of the works. **This application does not concern the issue of whether any service charge costs are reasonable or payable.**

The determination

14. The Tribunal has considered the papers lodged. The Tribunal are assured by the managing agent that the Directions were satisfied and no objection raised or submitted by the Respondent leaseholders.
15. The Applicants has failed to demonstrate in their submission a need to carry out the works urgently to reduce the inconvenience and risks to

residents at the property caused by the poorly identified defects. The content of the dispensation application is ambiguous, it omits relevant detail and generally falls below the standards expected of a professional managing agent.

16. In the absence of a satisfactory application from the managing agents the Tribunal rely upon their knowledge and experience of property dampness in period dwellings in making this determination. They acknowledge timely works to remedy dampness and associated timber rot will reduce the likelihood of further damage to the fabric of the property. Such dampness damage can be extensive and profound. It is for this reason that retrospective dispensation from statutory consultation is deemed appropriate. It is also noted that there was no objection from any leaseholder to the works following the issue of the Directions.
17. The Tribunal has not identified any prejudice to the leaseholder caused by the failure to comply with the statutory consultation procedure on this occasion.
18. It is for these reasons the Tribunal is satisfied it is appropriate to dispense with the consultation requirements for the Damp Repair works.
19. **It is the Applicant's responsibility to serve a copy of the Tribunal's decision on all Respondent leaseholders listed on the Application.**
20. **This decision does not affect the right of the Respondents to challenge the costs, payability or the standard of work should they so wish.**

Valuer Chairman: Ian B Holdsworth **Date:** 13 November 2024

Appendix of relevant legislation

Section 20 of the Act

- (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) a leasehold valuation 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 tenant’s 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.

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).