



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

Case reference : **LON/00AU/LDC/2024/0618**

Applicant : **Savvas Savva**

Representative : **n/a**

Respondents : **(1) Paddy Crawley (Flat A)**
(2) Rebecca Crawley (Flat A)
(3) Alex Main (Flat B)
(4) Danielle van Gilst (Flat B)
(5) Richard Cheshire (Flat C)
(6) John Athanasiou (Flat D)

Property : **15 Chapel Market London N1 9EZ**

Tribunal : **Judge N O'Brien**

Date of Decision : **17 December 2024**

DECISION

Decision of the Tribunal

1. The Tribunal grants the application for retrospective dispensation from the statutory consultation requirements in respect of the subject works namely works to two chimney stacks on the roof of the subject building, and any ancillary roof works, more particularly described in Box 1 of Part 14 of the application.

The Application

2. On 26 September 2024 the Freeholder/Applicant sent an application to the tribunal seeking dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (LTA 1985) from the statutory consultation requirements contained in section 20 LTA 1985. The works in relation to which dispensation

is sought, as described in Box 1 to Part 14 of the application, are structural repairs to two chimney stacks situated on the roof of the building.

3. The building consists of a Victorian terrace over four floors with commercial premises on the ground floor and basement, and four flats; one on the ground and lower ground floor, and a further three flats on the first, second and third floors of the building. Each flat is demised pursuant to a long residential lease which requires the Applicant/freeholder to supply services and the Respondents/leaseholders to contribute to the costs by way of a variable service charge.
4. By directions dated 20 October 2024 the tribunal directed that the Applicant should, by 8 November 2024, send to the leaseholders and the residential sub-lessees and any recognised tenants' association the application, a brief statement explaining the reasons for the application and the directions by email or post and affix them to a prominent place in the common parts of the property. The applicant's agent confirmed by email sent on 13 November 2024 that it had complied with that order on 8 November 2024.
5. The directions provided that if any leaseholder or sublessee objected to the application, he or she should inform the Applicant and the Tribunal by 22 November 2024, with any reply by the Applicant to be filed and served by 29 November. The Tribunal received written objections to the application from all the residential leaseholders. The Tribunal also received a written reply from the Applicant and a further response from the leaseholders which the Tribunal has considered notwithstanding the fact that there was no provision in the directions for a second leaseholder response.
6. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. Neither the Applicant nor any of the Respondents have requested a hearing and so the application has been considered on the papers provided.
7. This determination relates to the repairs to the chimney stacks described in the application, and any ancillary roof works. It does not relate to whether or not the cost of the works was payable, reasonable or reasonably incurred. It does not relate to any other roof works.

Legal Framework

7. The Service Charges (Consultation Requirements) (England) Regulations 2003 set out the consultation process which a landlord must follow in respect of works which will result in any leaseholder contributing more than £250 towards the cost. In summary they require the Landlord to follow a three-stage process before commencing the works. Firstly the Landlord must send each leaseholder a notice of intention to carry out the works and give the leaseholders 30 days to respond. Then the Landlord must send out details of any estimates and permit a further

30-day period for observations. Then, if the landlord does not contract with a contractor nominated by the leaseholders or does not contract with the contractor who has supplied the lowest estimate, it must service notice explaining why.

8. Section 20ZA of the LTA 1985 provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with any or all 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”.

9. In *Dejan Investments Ltd v Benson and others [2013] UKSC 14* the Supreme Court held that in any application for dispensation under s20ZA of LTA 1985 the Tribunal should focus on the extent, if any, to which the leaseholders are or would be prejudiced by either paying for inappropriate works or paying more than would be reasonable as a result of the failure by the landlord to comply with the Regulations. The gravity of the landlord’s failing or the reasonableness of its actions are only relevant insofar as they are shown to have caused such prejudice. The evidential burden of identifying relevant prejudice lies on the tenants but once they have raised a credible case of prejudice, the burden is then on the landlord/applicant to rebut it.
10. Dispensation will not be granted simply because the works are urgent; the primary consideration is whether the leaseholders have suffered any relevant prejudice (see *Marshall v Northumberland and Durham Property Trust [2022] UKUT 92 (LC)* at para 64).

The Applicant’s Case

10. The Applicant’s case as set out in the application is that the need for repairs to the chimney stacks was discovered in the course of ongoing roof works. He states that while he had not complied with the s.20 consultation requirements, he had consulted the leaseholders informally via email. He states that he had obtained estimates from two building companies which had been sent to the leaseholders, along with reports from a structural engineer and building surveyor. He submitted that the works were urgent due to the risk of falling masonry from the chimney stacks.
11. In his statement dated 8 November 2024, Mr Savva again explained that the need for urgent repairs to the chimney stacks came to light in the course of repair works to the roof. He states that the shared stack with 14 Chapel Market has partially collapsed, and the stack shared with no 16 is in a very poor structural condition. He states that he has liaised with the leaseholders in relation to the works and obtained two estimates however it is not clear if he is referring to the roof works generally or to the specific works of repair to the chimney stacks. He states that he instructed the builder who supplied the

lowest estimate to complete the works. He exhibits to his statement a report prepared by Mr D McAlpine of Furniss Consulting Engineers dated 6 March 2024 relating to both chimney stacks and the roof parapet. Mr McAlpine considered that the cause of the damage to the front stack was likely to have been the temporary roof framework which had been erected in the course of other repair works to the roof. He also noted that the parapet between the stacks was in poor condition.

12. Mr Savva exhibits two estimates one in the sum of £28,392 from JVS Vinci Builders Ltd and another from Rama Property Ltd in the sum of £39,180. Both estimates appear to include works to the roof generally and not just the two defective chimney stacks. He has also exhibits an assessment prepared by a Mr Vithesh Sakthivel of JVS Vinci Builders Ltd dated 6 November 2024 which indicates that in his view the works to the chimney stacks were urgent as they were structurally unsound and posed a danger to persons in the street below. He also exhibits a number of emails passing between the Applicant and the Respondents which indicates that they had in principle agreed to accept the estimate prepared by JVS Vinci in respect of the outstanding works to the roof on the basis of staged payments.
13. The Respondent leaseholders have prepared a joint written response objecting to the application dated 22 November 2024. They express dissatisfaction with the progress of the roof works which commenced in September 2023, and with the standard of the works already undertaken. They note that the anticipated total cost had increased from £25,000 - £30,000 to £81,000 and submit that the freeholder had failed to comply with the s.20 consultation requirements in respect of the works as a whole. They consider that the chimney stacks were damaged by the negligence of the initial contractor selected to carry out roof works in 2023 and note that the interior of flats D and C have been damaged by water ingress. They request that the application for dispensation be dismissed and seek further relief which is outside the scope of this application. They do not suggest conditions which could be attached to a dispensation order in the alternative.
14. In his reply, drafted by counsel, the freeholder submits that the leaseholders have conflated the roof works carried out in 2023 with the urgent works to the chimney stacks required in 2024 and further submits that the leaseholders had already accepted the estimate prepared by JVS Vinci Builders Ltd and have not identified any relevant prejudice. The freeholder submits that the estimate supplied by JVS Vinci Builders was in respect of the works to the chimney stacks however the tribunal notes that it also included the following;
 - (i) Replace lead work to windows
 - (ii) Clean and replace gutters
 - (iii) Supply and install new dome roof
 - (iv) Replace roof slates
 - (v) Replace lead flashing

It is not clear to the Tribunal whether these works are connected to or made necessary by the repair works to the chimney stacks. The Tribunal notes that at paragraph 8 of the reply the freeholder appears to widen the scope of the costs in respect of which he seeks dispensation, and includes all the works set out in the JVS Vinci estimate as well as some additional costs.

15. In their second reply submitted by all the freeholders, they point to the increase in the estimated costs as proof of prejudice and submit that this was caused by or contributed to by a failure to consult them before the roof works commenced. They consider that the need for emergency works is in part due to negligence on the part of the contractor initially instructed on the Freeholders behalf. They agree that the chimney stacks are in a dangerous condition and assert that the way in which the repairs have been undertaken has led to damage to the building and financial loss. They do not suggest any conditions which might be attached to any order granting dispensation, and do not provide evidence to suggest that they lack of consultation has resulted in them paying more for the repairs to the chimney stacks than they otherwise would have.

The Decision

16. The Tribunal determines that it will grant the dispensation sought in the application i.e. dispensation in respect of the chimney stack repairs and any necessary ancillary works.

Reasons for the decision

17. The tribunal considers that the matters raised by the leaseholders in their replies do not show that they have been prejudiced the failure to consult specifically in relation to the chimney stack works. They have not adduced any evidence to show that they could have obtained a better estimate from another contractor to carry out the works required to put the stacks in repair. Further the Tribunal notes that while the freeholder did not formally comply with the s.20 consultation requirements in respect of the chimney stack works, he did supply the leaseholders with two estimates which included the works required to the chimney stacks, albeit they also included additional works to the roof which do not appear to the Tribunal to be directly associated with the disrepair to the chimney stacks.
18. This determination is in respect of the chimney stack works only and such roof works as are ancillary to those works. It does not affect the rights of the leaseholder to apply for a determination under s27A of the LTA 1985 in respect of the cost of the chimney stack works, save insofar as any such application relies on a failure to comply with the statutory consultation requirements in relation to those works. The tribunal has made no determination in relation to any other roof works which are not ancillary to the repairs to the chimney stacks.

19. The Applicant is reminded that, as stated in paragraph 8 of the directions, the Applicant is to serve a copy of this decision on all the affected lessees.

Name: Judge N O'Brien

Date: 17 December 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).