



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

Case reference : **LON/00BK/LDC/2024/0240**

Property : **75-89 Lancaster Gate, London W2
3NH**

Applicant : **The Lancasters Management Limited**

Representative : **Withers LLP**

Respondents : **The lessees listed in the schedule to
the application**

Type of application : **To dispense with the requirement to
consult leaseholders**

Tribunal Member : **Judge N Hawkes
Ms S Coughlin MCIEH**

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

**Date of paper
determination** : **16 December 2024
18 December 2024 Amended
pursuant to rule 50 of Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules**

DECISION

Decision of the Tribunal

The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 8 August 2024. **Accordingly, for the avoidance of doubt, the Tribunal grants dispensation from with the statutory consultation requirements to consult leaseholders in respect of the work which forms the subject matter of the Applicant's application dated 8 August 2024**

Background

1. In the application form, the Applicant states that:

The Applicant is a company limited by guarantee. As can be seen from the sample lease, it was originally the Manager responsible for providing the services and entitled to enforce payment of service charges in respect of each of the leases.

Since September 2014, the Applicant has also been the registered freehold proprietor of the subject property. The directors of the Applicant are the proprietors (or representatives of corporate proprietors) of long leases in the subject property, and each of the lessees in the subject property are members of the Applicant.

The subject property itself is a large Grade II Listed building with three façades which was originally built in around 1860. The Lancaster Gate façade faces north, the Leinster Terrace façade west, and the Bayswater Road facade south. The subject property originally comprised fifteen terraced houses, which are referred to by their original numbering, but they were converted into 77 leasehold properties between 2007 and 2012. Each of the 'houses' has two facades, with a flank wall facing Leinster Terrace only. The other end of the building is a party wall to the adjoining Thistle Hotel. The total number of house facades can therefore be subdivided to 32 facades.

The redevelopment of the 15 houses into 77 leasehold properties in 2012 was a substantial development which included the retention of the facades to the houses. A new reinforced concrete frame was built within the facades. Defects to the façade became evident following the completion of the development (involving flaking paint and cracks in the render/stucco).

Investigations in relation to the defects were carried out. Rosewood (a façade contractor) was appointed to carry out repairs. Whilst the façade repairs were originally thought to be limited to render repairs, the defects to the façade have turned out to be much more extensive. Further defects became apparent during the course of the works, which caused significant increases in the cost of the work.

On 29 April 2019 the Applicant made a protective application for dispensation from statutory consultation requirements in relation to façade works to be carried out to the property. The estimate for the cost of the façade works had increased since the Statement of Estimates was first sent to leaseholders (although they had been provided with regular further updates in relation to costs), and certain additional works were also identified. Dispensation was granted on 4 July 2019 for works costing £5,557,399 including VAT. None of the leaseholders objected to the Applicant's application.

During the works, which proceeded under the Applicant's contract with Rosewood ('the Rosewood Contract'), it became apparent that substantial additional works to defects - which were not previously discoverable - were required; and that more extensive façade works than originally envisaged were also required. A second application for dispensation from the statutory consultation requirements was made on 19 March 2020; the application was amended on 28 August 2020. One of the leaseholders objected to the application, but dispensation was granted on 21 January 2021 for works costing £17,517,381.92 including VAT and fees.

A third application for dispensation from statutory consultation requirement was made on 8 June 2022 and amended on 20 September 2022. That application was made because the cost had increased due to:

- a) increased quantities of structural masonry and render repairs*
- b) increased quantities of precast repairs and ornate details*
- c) the delay to the completion date to June 2024*
- d) additional cost inflation, and*
- e) an additional contingency of £500,000.*

As at 20 September 2022, it was estimated that the total cost of the works would be £27,790,185.55 including professional fees and VAT. Dispensation from statutory consultation was granted by the Tribunal in a decision dated 18 October 2022.

2. The grounds for seeking dispensation are set out as follows:

The façade remedial project is approaching completion [an update on progress is given].

...

This application concerns four broad categories of qualifying works, plus costs relating to additional preliminaries, contingencies, and professional costs. Those four categories are: (1) Render and Masonry repairs; (2) External Decoration; (3) Roof Drainage; and (4) Sliding Ties. With 1 exception, each of those broad categories of work were either included within the original Schedule of Works (and therefore the original consultation process) or within the Applicant's previous

applications to the Tribunal (albeit with smaller costs estimates). What has changed is the amount of work to be undertaken.

The exception is the Roof Drainage - during the course of the works, it was discovered that there were also defects in this area.

The position in summary is that on 18 October 2022, dispensation from the statutory Section 20 consultation procedures was granted by the First-Tier Tribunal Property Chamber (Residential Property) for the sum of £27,790,185.55 (inclusive of professional fees and 20% VAT). This sum was based on a cost projection which was finalised on 12 September 2022. That cost projection assumed a revised Completion date of 30th March 2024 and included a provisional allowance for a 13-week extension of time to 30th June 2024.

However, on 26 October 2022, a significant new defect emerged. Some of the cantilevered York stone slabs supporting the fifth-floor cornice were found to have delaminated and cracked through the bedding joints. It was found that the construction techniques employed by the original builder on the Bayswater Road façade (houses 80-89) were different to those on the same façade of houses (75-79), which is why the structural problems found in the 5th floor cornice to houses 80-89 could not be anticipated and included in the September 2022 application for dispensation.

The Structural Engineer was concerned about the reduced structural capacity of the York stone slabs and, after being in position for over 150 years, whether this defect was more widespread. Further investigations were carried out by exposing more slabs along the entire 83 metre length of cornice to houses 80 – 89 Bayswater Road to confirm the extent of the problem. This application addresses the cost of this issue.

The solution adopted, which could be carried out without significant disruption to residents, was to install a system of stainless-steel supports to allow most of the defective slabs to remain in place. These additional supports were buried within the reconstructed cornice and used alternative materials to reduce the weight of the cornice. The overall cost of this solution was anticipated to be less than replacing the defective slabs.

The Contract Administrator instructed Rosewood to proceed with the solution. Rosewood mobilised additional resources to site and completed the repair work as quickly as possible whilst, at the same time, proceeding with work on scaffolding lifts below to mitigate the overall costs and delay to the programme.

Nevertheless, the additional defect and work to the 5th floor cornices has resulted in a 2-month overall delay to programme and cost projections have had to be amended as a result.

The direct cost effect of the additional work to the 5th floor cornice falls within the overall cost increases for masonry and render repairs, professional fees and loss and expense items such as extended preliminaries, staff costs, scaffolding and hoisting. The cost associated with addressing this additional defect was substantial.

In summary, the additional costs have and will be incurred mainly in connection with:

- 1. the substantial rebuilding of the 5th floor cornice and associated work on the Bayswater Road façade of houses 80 to 89 as referred to above. This involved additional costs of £417,637 plus VAT as indicated on the breakdown below.*
- 2. Additional leadwork costing £15,688.87, in connection with the 5th floor cornice repairs, was required.*
- 3. Additional redecoration costs; cost savings that were anticipated in the last application have not been realised, resulting in increased costs of paint removal and external decorations of £28,417.03 plus VAT and £80,341.21 plus VAT.*
- 4. Increased preliminaries and loss & expense, especially extended hire costs of scaffolding & hoists, due to the revised projected completion date (resulting in increased costs of £62,541.41 plus VAT and anticipated loss and expense of £224,984.12 plus VAT)*
- 5. Increased professional fees due to the revised projected completion date of September 2024, estimated to be in the region of £63,940.85 plus VAT*
- 6. Additional costs for the repair of ornate features of £87,378.70. The remaining pediments at 2nd floor level proved to be particularly time consuming.*
- 7. Additional costs of £10,248.79 plus VAT will be incurred to complete the repairs to the 1st floor balcony, primarily due to the need to specify an alternative waterproofing product because the supplier of the originally specified product is no longer trading.*
- 8. Additional work to the Bayswater Road lightwells costing £127,008.16. It proved impossible to remove the coping stones without breaking them, so all coping stones from Houses 77 – 89 had to be removed and reinstated prior to the re-installation of the galvanised steel railings. Also, the paintwork to the galvanised railings was poorly adhered so it all had to be removed and a full paint specification re-applied after installation.*
- 9. The additional roof drainage costs were incurred on Phases 1 & 2 and were previously reported within contingency costs. However, the cost of these works have been incurred and should be included within such costs.*
- 10. An additional allowance of £190,000.00 plus VAT has been included, on the recommendation of the Quantity Surveyor, to provide some tolerance during negotiation of the final account. However, the Quantity Surveyor cannot provide an assurance at this time that the final account will be agreed within this cost projection and it may be necessary to make one final application for dispensation when the final account has been agreed with Rosewood.*

The revised costs set out below include a credit in respect of fluctuations. The Quantity Surveyor considers that the allowance for fluctuations can be reduced from £800,000.00 to £660,000.00 plus VAT. Therefore, this projected cost has been reduced by £140,000.00 plus VAT. The revised total costs for the works amount to £29,524,035.00. This exceeds the sum for which dispensation from Section 20 procedures was granted for in October 2022 by £1,733,849.45.

[A breakdown and more detailed explanation of the costs is provided in the application form.]

To that extent that the Applicant is required to, it does not propose to formally consult leaseholders in respect of the additional costs or works which now need to be carried out in accordance with the statutory consultation process.

The statutory consultation process is not proposed to be followed since, at this stage of the project, using a different contractor to complete the works would not be a viable option.

In addition to this, the weekly cost of delaying works under the Rosewood Contract to allow the consultation process to be carried out is prohibitive, whilst the pressing nature of the structural works also provided further grounds for avoiding additional delay.

As set out in previous applications, the Applicant stresses that whilst it is making progress in negotiations to reduce the additional costs with Rosewood, some of the works - particularly those related to render and masonry repair and the finalisation of disputed amounts over the entire project - are difficult to calculate at this stage and could be subject to change.

However, the Applicant had no choice but to continue with the works to avoid incurring substantial additional costs for delay (as referred to above) and without dispensation from the consultation requirements, it may experience difficulties with costs recovery.

Delaying the works which are the subject of this application would have extended loss of amenity for leaseholders and residents because further delays to the programme of works would have extended the period during which scaffolding has been erected across the facades and the windows obscured by boards.

Despite the formal consultation process not having been carried out, the project managers in respect for the project, Arambol LLP, reported to leaseholders (also all members of the Applicant) at the Applicant's AGM on 12 December 2023 that an additional sum of approximately £1.4million (including VAT) may be required to complete the project.

However, Rosewood issued a draft claim for additional 'loss and expense' for unattributed costs in the sum of £1.4million on 17th May 2024. The professional team have reviewed the claim and taken advice from an experienced construction claims consultant. While several aspects of the claim are valid, the claim included a significant value that was either overstated or already accepted in interim certificates issued to date. A letter has been sent to Rosewood addressing the issues in some detail and their response is awaited.

The construction claims consultant advised that an Adjudicator is likely to be sympathetic to some of Rosewood's claims but, while a claim may be valid in principle the additional quantum may be zero, especially where costs have already been reimbursed through interim certification. Based on this advice, the QS estimates the additional Loss and Expense costs to be in the region of £224,984.12. For the purposes of this application for dispensation from Section 20 procedures, the sum of £190,000.00 plus VAT has been included as a budget for negotiation and agreement of this and any other claims that may be submitted by Rosewood. The final sum will only be known once the final account has been agreed.

Four primary elements of work, comprising (1) the Render and Masonry repairs; (2) the External Decoration; (3) the Roof Drainage; and (4) the Sliding Ties were either included within the original Schedule of Works, and therefore the original consultation process, or within the applicant's previous applications to the Tribunal.

What has changed has been the discovery of the significant new defect that emerged on 26 October 2022 (as set out above) and the increased costs associated with addressing this and other ongoing issues.

*Therefore, in accordance with the guidance afforded by the Court of Appeal in *Reedbase Limited v Fattal* [2018] EWCA Civ 840, the Applicant's primary position is that it complied with the statutory requirements by serving a section 20 notice on the leaseholders in respect of the façade works as originally envisaged in previous applications. The tribunal's decisions to date appear to have endorsed this approach.*

As set out above, on conducting the initial survey of some of the cantilevered York stone slabs supporting the 5th floor cornice the Structural Engineer was concerned about the reduced structural capacity of the slabs, after being in position for over 150 years, whether this defect was more widespread. Further investigations were carried out by exposing more slabs along the entire 83 metre length of cornice to houses 80 - 89 Bayswater Road to confirm the extent of the problem.

After the investigations were complete, the Structural Engineer concluded that the whole elevation was affected to greater or lesser degree and the potential danger meant that the delaminated and

cracked slabs should not be left in place. The Structural Engineer then considered various solutions but, due to waterproofing issues related to the parapet gutters, the most obvious one: cutting out and replacing the defective slabs, would have required installing a temporary roof over the whole building from houses 80 - 89. This would have involved substantial additional cost and disruption for residents and was not considered a viable solution. An alternative solution, which could be carried out without significant disruption to residents and which was adopted, was to install a system of stainless-steel supports to allow most of the defective slabs to remain in place. These additional supports would be buried within the reconstructed cornice and use alternative materials to reduce the weight of the cornice. The overall cost of this solution was anticipated to be less than replacing the defective slabs.

Also, given the timing, location and extent of the repair work it was clear to the professional team that the repair to the 5th floor cornice was on the critical path for completion of the project as a whole and there was no option but to proceed. That is, the professional team had to instruct Rosewood to proceed when they did to minimise delays to the overall programme of works.

The need to proceed can be illustrated by comparing interim Payment Notices for the period September 2022 to March 2023 [the Notices are then set out]

The defect was first noted on 26th October 2022 and by continuing work elsewhere on the project, Rosewood were able to maintain work levels (reflected in their November valuation at over £400k). However, the work at 5th floor cornice level was fully designed and specified during the period November 2022 to January 2023 and this impacted Rosewood's ability to maintain production. This can be seen by the reduced monthly valuations for December & January 2023 (i.e. £176k and £203k respectively). Once the work to be undertaken had been specified and instructed, Rosewood immediately responded by bringing additional labour to site, and their valuations for February and March 2023 quickly increased to £373k and £590k respectively. Rosewood maintained higher output until the structural repair work on the Bayswater Road façade had been substantially completed.

It can also be seen that the Gross Amount Certified on an interim basis at the end of December 2022 was in the region of £15.2 million. Subsequent events have shown that it was April 2024 before the Gross Amount Certified actually exceeded the sum of £21.3 million authorised for the construction works by the dispensation order dated 18 October 2022.

There is no doubt that the works were required, for the reasons set out above. Owing to the critical nature of the structural work that needed to be undertaken, there was no time to go through the formal consultation process (without incurring significant costs for

leaseholders, not least because there would be considerable costs involved in terminating the contract with Rosewood) and it would not be appropriate to obtain tenders from more than one contractor, because Rosewood had already been appointed.

Therefore, no prejudice has been or will be suffered by leaseholders by instructing Rosewood to carry out the works which are the subject of this application without the statutory consultation procedure being further complied with. The statutory consultation process would have only increased costs and given rise to delay unnecessarily. Rosewood was able to carry out the works cost-efficiently, competently, and relatively quickly, given that it was already on site. The grant of dispensation, of course, would not prevent any of the leaseholders from challenging the payability or reasonableness of any service charges.

Rosewood is wholly unconnected with the Applicant.

Finally, as referenced in previous applications, it is believed that the leaseholders would like the works to be carried out and completed as soon as possible. For health and safety reasons, all windows and doors had to be boarded over, reducing the amount of natural light that residents would normally enjoy. Any delay to remedial work to the 5th floor cornice would have also delayed the date when boarding could be removed and natural light restored. All boarding has now been removed down to 1st floor balcony level and only windows to the lower ground floors remain boarded.

At the time the defect was first identified, the building was heavily scaffolded, and an eyesore. As a result, many leaseholders had vacated their apartments or chosen to live elsewhere during the works, while other leaseholders have been unable to secure tenants for their apartments. By proceeding with the 5th floor cornice repair and other necessary structural works, all work was undertaken and completed at the earliest possible date which has allowed the scaffolding to be progressively removed and ongoing loss and expense costs reduced. At this time, only scaffolding on the Bayswater Road façade at and below the 1st floor balcony level remains standing and this will be removed by end August, with outstanding decorations within the garden area: metal railings, gates, gatehouse, external and boundary walls etc, completed by Friday 27th September 2024. For all the reasons set out above, the Applicant respectfully seeks an order from the tribunal for dispensation from the statutory consultation requirements (to the extent it is needed) in relation to the items described above.

3. The application is dated 8 August 2024, and the Respondent lessees are listed in a schedule to the application. Directions of the Tribunal were issued on 30 October 2024 (“the Directions”).

4. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements, insofar as is necessary, in respect of **the work** described in the application. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**
5. The Directions included provision that this application would be determined on the papers unless an oral hearing was requested. No application has been made by any party for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 16 November 2024.
6. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute.

The Respondents' case

7. One subtenant responded to the application stating that they assumed it did not apply to them. However, none of the Respondents has submitted a reply form to the Tribunal and/or has made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements.

The Tribunal's determination

8. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.
9. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
10. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
11. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. In determining this application, the Tribunal has considered *Daejan Investments Ltd v Benson* [2013] UKSC 54, [2013] 1 WLR 854.
12. In all the circumstances and having considered:

- the Applicant's application;
- the evidence filed in support of the application; and
- the fact that none of the Respondents has submitted a reply form to the Tribunal and/or has made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements;

the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 8 August 2024. The Tribunal is satisfied on the balance of probabilities that it was not practicable to comply with the statutory consultation requirements in this instance.

13. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

Judge N Hawkes

Date: 16 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).