



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

Case reference : **LON/00BK/LDC/2024/0104**

Property : **260 Elgin Avenue, London W9 1JD**

Applicant : **260 Elgin Avenue Limited
Company number 05067851**

Representative : **Clarke Willmott LLP, Solicitors**

Respondent : **Leaseholders of 260 Elgin Avenue
(1) Addison Properties Limited (flat 1)
(2) Alexandra Savis (flat 3)
(3) Steve Robinson & Denise Chan (flat 4)
(4) Simon Simmonds (flat 5)
(5) Melissa Khaw & David Khaw (flat 6)
(6) Lisa Matthews & James Street (flat 7)**

Representative : **Shoosmiths, Solicitors for Mr
Simmonds
Other Respondents not represented**

Type of application : **To dispense with the requirement to
consult lessees about major works,
s.20ZA Landlord and Tenant Act 1985**

Tribunal members : **Judge M Jones
Mr A Fonka FCIEH**

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

Date of decision : **05 February 2025**

DECISION

Summary of the Decision

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) from the consultation requirements imposed on the landlord by**

Section 20 of the 1985 Act in respect of structural repair to the balcony, supporting timbers and brickwork of Flat 5, internal cracking to Flat 3's brickwork area above ground floor windows, decay to the timber bressummer beam supporting the main elevation of the Property, and to the roof of the Property, carried out between January and July 2023.

- 2. The Tribunal does not impose any conditions on the grant of dispensation.**
- 3. The Tribunal has made no determination as to whether costs of the works are reasonable or payable.**

Background to the Application

4. The Applicant landlord applied by application dated 26 March 2024 for dispensation under Section 20ZA of the 1985 Act from the consultation requirements imposed by Section 20 of the 1985 Act, in respect of works of repair to the balcony structure adjacent to Flat 5 and to the roof of the Property consequent upon water penetration, and to prevent future leaks.
5. The Property consists of a large Victorian terraced house which was historically converted into seven self-contained flats. Two of those flats (nos. 2 and 4) were subsequently cojoined to create one larger flat (now known as Flat 4), so that the Property now contains 6 flats arranged over 5 floors, numbered 1, 3, 4, 5, 6 and 7. Flats 1, 3 and 4 are on the lower ground and ground floors, Flat 5 is on the first floor, Flat 6 on the second floor and Flat 7 on the third floor..
6. The Applicant is the landlord under the various leases of the individual flats within the Property.
7. The respondents are the tenants of the residential flats.
8. The Applicant describes the qualifying works thus:

“The qualifying works (“the Works”) involved urgent and necessary structural repairs to the Property, specifically to the balcony, supporting timbers and brickwork of Flat 5 and the roof of the Property

“The works were carried out between January and July 2023.”
9. The background rewards scrutiny. In the latter part of 2021 the lessee of Flat 5 reported water pooling on the balcony outside his flat, which was directly above the recently replaced bay windows of Flat 3, together with a crack in the party wall at one side of the balcony.
10. In investigating the issues, a structural report was commissioned from Alan Baxter Partnership LLP, Consulting Structural Engineers. This,

dated 14 December 2021, found structural defects to the brickwork and beams supporting the Flat 5 balcony, consequent upon wet rot due to historic water penetration, which had caused the timber lintels supporting the balcony slab to fail. When the windows of Flat 3 had been removed as part of the replacement process, the balcony was left temporarily unsupported, causing it to drop. The report concluded that repairs were needed both to the balcony structure and to the roof of the Property to prevent further water leaks.

11. Following various meetings between the lessees, and a change of property manager to Fresh Property Management Ltd in July 2022, the lessees of Flats 3 and 5 together commissioned a report dated 28 September 2022 from Earl Kendrick Building Surveyors, prepared as an expert witness report in respect of proceedings before the First- Tier Tribunal (Property Chamber) between Mr Simmonds of Flat 5, Ms Savis of Flat 3 and the Applicant.
12. The Earl Kendrick report both corroborated and expanded upon the findings in the earlier Alan Baxter Partnership report, and emphasised the desirability for the works identified therein to be undertaken urgently, due to the risk to the residents in the Property inherent in the structural defects identified. The identified works included structural rebuilding of the Flat 5 balcony, rebuilding brickwork sections and arches, replacing the failed window lintels and bressummer beam, internal repairs, new ceilings, flooring, tiling and redecorations, at an estimated cost of between £50,000 to £80,000.
12. A Notice of Intention under Section 20 of the 1985 Act to undertake the proposed structural works was issued to leaseholders on 25 July 2022. This was accompanied, on the same date, with a second Notice of Intention regarding proposed works to repair the roof, which had permitted water leaks to enter Flats 7 and 6.
13. These were followed by a Statement of Estimates dated 22 November 2022.
14. On the Applicant's case, within a few days of submission of the Statement of Estimates it became apparent that Mr Simmonds of Flat 5 was unwilling to await completion of the s.20 consultation process, as he was understandably keen for the balcony and roof work to be effected at the same time, and commenced without delay. The Respondents as a whole agreed to this course.
15. Thereafter, the Respondents themselves, it seems by majority, nominated Jason Tate as the contractor for the balcony works, and CP Roofing to undertake the roof works. Pragmatically, the Respondents collectively loaned to the service charge account the funds required to effect the works.
15. JCT contracts in respect of the proposed works were signed in December 2022.

16. Scaffolding was erected at the Property on 12 January 2023, and the works then commenced. The works to the roof commenced in mid-January 2023 and were concluded in early February, and the main structural work started in March/April 2023 and was completed by July 2023. The scaffolding was, finally, removed on 14 August 2023. We have seen correspondence sent thereafter by Ms Katz, director of Fresh Property Management Ltd., advising the lessees as to the progress of the works.
17. While it is apparent from the documentation provided that all necessary statutory consultation was not undertaken by the Applicant, it is clear, and insofar as is necessary the Tribunal finds that the urgent nature of the Works and risks to residents consequent upon the ascertained structural issues led the Respondents each to agree to dispense with the formal s.20 consultation process, to the extent of advancing funds to enable the Works to proceed.

The Application and Procedural History of the Case

18. The Respondents were formally advised of the Applicant's intention to make this application, by letter dated 16 January 2024. As stated above, the application itself was made on 26 March 2024, on the Applicant's case simply to regularise the position.
19. On 15 May 2024 the Tribunal issued Directions which included, at paragraph 2 a requirement that the Respondents, if any wished to oppose the application, should complete and send both the reply form attached to the Directions and a statement in response to the application by 12 June 2024. That deadline was subsequently extended on several occasions, in part postponed by a stay of the application, to 19 November 2024.
20. The Fourth Respondent, Mr Simmonds of Flat 5, filed and served a witness statement dated 26 June 2024 in opposition to the application. None of the other Respondents did likewise.
21. Mr Simmonds' opposition was, in part, based upon his allegations of delay on the part of the Applicant both in investigating the need for and commissioning the Works, and in making the application, and in part based upon his own application made to the Tribunal on 10 January 2024 pursuant to section 27A of the 1985 Act, seeking a determination as to the reasonableness of service charges demanded for the four years from 2020/21 to 2023/24 inclusive. His request, initially, was for the present application and for his s.27A application to be listed together, for an oral hearing.
22. Ultimately, however, Mr Simmonds indicated that he wished to withdraw his opposition to the application, having settled his differences

with the Applicant, as indicated in a letter to the Tribunal dated 24 January 2025 from his solicitors, Shoosmiths.

23. In its application the Applicant stated that it would be content with a paper determination if the Tribunal considered it appropriate, and by its directions given and amended on various dates the Tribunal allocated the case to the paper track (i.e. without giving directions for an oral hearing), but directed that any party had the right to request an oral hearing. Besides Mr Simmonds, who has now withdrawn his opposition, no other party has requested an oral hearing.
24. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
25. Before making this determination, the papers received including the Applicant's hearing bundle comprising some 442 pages were considered, to ascertain whether the issues remained capable of determination without an oral hearing and it was decided that they were, in particular given the absence of any formal representations to the contrary.
26. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

The Law

27. The relevant section of the 1985 Act reads as follows:

"S.20 ZA Consultation requirements:

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."

28. The matter was examined in detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
 - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

- b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 29. The Applicant's case is summarised in paragraphs 4 to 18, above.
- 30. But for Mr Simmonds' evidence, his objection having now been withdrawn as noted above, the other Respondents have not provided a formal response to the application.

Determination

- 31. Dispensation from the consultation requirements of S.20 of the 1985 Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be

exercised is provided by the leading case of *Daejan v Benson*, referred to above.

32. While the landlord did not comply with all consultation requirements, the Tribunal has found that the urgent nature of the Works and risks to residents consequent upon the ascertained structural issues led the Respondents each to agree to dispense with the formal s.20 consultation process, to the extent of advancing funds to enable the Works to proceed.
33. Where there was failure to comply with the statutory regime, the issue is simply whether by not being consulted the Respondents have suffered prejudice.
34. In the circumstances of this case we find nothing on the evidence before us to establish that the Respondents have suffered prejudice and, as such, we are prepared to grant the dispensation sought.
35. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of structural repair to the balcony, supporting timbers and brickwork of Flat 5, internal cracking to Flat 3's brickwork area above ground floor windows, decay to the timber bressummer beam supporting the main elevation of the Property, and to the roof of the Property, carried out between January and July 2023.**
36. **The grant of dispensation is unconditional.**
37. **In granting dispensation, the Tribunal makes no determination as to whether any service charges are reasonable or payable.**

Name: Judge M Jones
Mr A Fonka FCIEH

Date: 05 February 2025

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).