



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

Case Reference : **LON/00AE/LDC/2024/0248**

Property : **Mapesbury Court, 29-61 Shoot-Up Hill,
London NW2 3PU**

Applicant : **Transgain Ltd.**

Representative : **Not represented**

Respondents : **The Leaseholders of Mapesbury Court**

Representative : **Not Represented**

Type of Application : **For the determination of an application
for dispensation from the statutory
consultation requirements**

Tribunal Members : **Judge S.J. Walker**

**Date and venue of
Hearing** : **Decided on the Papers**

Date of Decision : **12 March 2025**

DECISION

Decision of the Tribunal

The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of the following works at Mapesbury Court, 29-61 Shoot-Up Hill, London NW2 3PU;

- (a) to provide access to all basement areas;**
- (b) to carry out boiler removal to both sides of the building by asbestos contractors;**

- (c) to carry out asbestos removal to all areas that hold plant or to which residents need access; and**
- (d) to supply and install new boilers and tanks to both basements and temporary boilers during the currency of the works**

Reasons

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of the following works;
 - (a) to provide access to all basement areas;
 - (b) to carry out boiler removal to both sides of the building by asbestos contractors;
 - (c) to carry out asbestos removal to all areas that hold plant or to which residents need access; and
 - (d) to supply and install new boilers and tanks to both basements and temporary boilers during the currency of the works
2. The application was made on 1 August 2024, when the application was received, and stated that it was being made because the boilers for heating and hot water at the property were condemned in November 2023, meaning that the heating could not be turned on for the winter for the whole of the property and that there was no supply of hot water to flats 21 to 40.
3. Directions were made on 23 September 2024 by Judge S. McKeown. They required the Applicant to send copies of the application and the directions to the leaseholders and to display a copy of them in a prominent place in the common parts of the property. The Tribunal is satisfied that this was done.
4. The directions provided that those leaseholders who opposed the application were to complete a reply form and return it to the Tribunal by 23 October 2024.
5. The directions further provided that the application would be determined on the papers in the week commencing 15 November 2024 unless by 14 August 2024 any party requested a hearing.
6. The Tribunal has received no request for an oral hearing.
7. I am satisfied that the Respondents have been given notice of the application and how to object to it and that they have been given notice that it is intended to deal with the application without a hearing. In the absence of any request for a hearing this determination is made on the papers which have been provided by the parties pursuant to rule 31(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

8. The relevant legal provisions are set out in the Appendix to this decision.
9. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. The applicant prepared a bundle consisting of 119 electronically numbered pages. References to page numbers throughout this decision are to the electronic page numbers of this bundle.

The Background

11. The property comprises two blocks of purpose-built flats built in the early twentieth century. The first block contains flats 1 to 20 and the second flats 21 to 40. The buildings are over 6 stories, including basements. In each basement there is a central heating plant room, each containing two gas-fired boilers. Access to a communal garden is provided through the basements.

The Lease

12. No evidence of title was produced. However, no issue has been raised as to the right of the Applicant to make this application.
13. A copy of a sample lease was provided to the Tribunal (pages 110 – 119). I was satisfied that it included the usual obligations on the tenant to pay a contribution towards the expenses incurred by the landlord in performing its obligations under the lease. Those obligations include an obligation to keep the structure of the property in repair, to maintain a common boiler for the supply of hot water to the radiators, to maintain a supply of hot water, and to provide and maintain all equipment for the fulfilment of the landlord's obligations.

The Issues

14. The only issue for me is whether or not it is reasonable to dispense with the statutory consultation requirements. I am not concerned with the issue of whether any service charge costs or legal costs will be reasonable or payable.

The Applicant's Case

15. The Applicant's case is set out in the grounds for seeking dispensation at pages 12 to 17. Their case is that the plant rooms in which the existing boilers are located contain asbestos which needs to be removed, and that the boilers which provide heating and hot water have been condemned and need replacing. They propose letting two contracts, one for asbestos removal and one for the replacement of the boilers and associated equipment.
16. Their case is that this work is urgently required in order to ensure reliable heating and provision of hot water for the winter of 2024.

17. The Applicant sets out the consultation which it says has taken place at paras 5 to 7 of their grounds. A first stage section 20 notice was circulated on 16 May 2024 with observations required by 20 June 2024 and a second stage section 20 notice was served on 12 July 2024 with a response date of 24 July 2024, less than the statutory 30 days. Observations were received from leaseholders which were considered, and additional contractors, identified by the leaseholders, were approached to tender.
18. Tenders were received from five contractors in respect of the asbestos removal and three contractors in respect of the boiler replacement. Two contractors have been appointed with the total cost of the works amounting to £521,685.15.
19. The Applicant contends that the Respondents have suffered no prejudice in respect of the appointment of these contractors. An abridged section 20 process was carried out and the Respondents have provided input into that process.

The Respondents' Case

20. The Tribunal has received responses from five leaseholders at the property, the tenants of flats 31, 32, 35, 38 and 39.
21. However, these responses do not amount to objections to the dispensation application itself. Indeed, some of the responses expressly state that there is no objection to the dispensation being granted (see for example pages 27 and 90). Rather, issue is taken with the chronology of events presented by the Applicant, complaint is made about delay by them, and objection is made to the Applicant seeking to recover their legal costs in respect of the dispensation application. The Tribunal has also received several applications from these leaseholders made under section 20C of the Act and/or paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002. The common theme appears to be that the works should, in fact, have been done sooner.

The Tribunal's Decision

22. I am satisfied that the consultation requirements should be dispensed with. I am satisfied that in view of the undisputed presence of asbestos in the boiler plant rooms and the undisputed failure of the existing boilers, it is appropriate to carry out the identified works and that it is appropriate to grant a dispensation.
23. I am satisfied that the leaseholders have been notified of the application and bear in mind that there has been no substantive objection from any of them to it. I also bear in mind the limited scope of the issue before me. The purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. There is nothing before me to suggest that the leaseholders would suffer any prejudice if this application were granted.

24. The other applications submitted to the Tribunal by the leaseholders of the flats referred to above are not before me. However, in the light of the Applicant's response at page 107, in which it is stated that the Applicant will not seek any legal costs associated with this application if it is determined on the papers, it would seem that many of them will now fall away.
25. In all the circumstances I am satisfied that it is reasonable to dispense with the consultation requirements.

Name: Judge S.J. Walker

Date: 12 March 2025

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
 and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

Section 20

- (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) the appropriate 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 tenants 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.]

Section 20ZA

- (1) 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.
- (2) In section 20 and this section –
 - “qualifying works” means works on a building or any other premises, and
 - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

- (5) Regulations under subsection (4) may in particular include provision requiring the landlord
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements
- (6) Regulations under section 20 or this section
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.