



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

Case reference : LON/00AX/LDC/2024/0162

Property : 97 King Charles Road, Surbiton, KT5
8PG

Applicant : Orchidbase Limited

Representative : Michael Richards & Co

Respondent : (1) Mr. Saul & Mrs.
Spevack
(2) Ms. Uzkaya
(3) Crystal White
Limited

Representative : N/A

Type of application : To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant Act
1985

Tribunal members : Judge Sarah McKeown

Date of decision : 20 May 2025

DECISION

This has been a remote hearing on the papers. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the Tribunal was referred are in an electronic bundle of 46 pages, the contents of which the Tribunal has noted. The decision made is as set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from statutory consultation in respect of works to remove asbestos in the sum of £8,445 plus VAT.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or cost of the qualifying long-term agreement.

The Applicant must serve a copy of this decision on all Respondents and display a copy of this decision in a prominent place in the common parts of the Property within 14 days of receipt of this decision.

The Application – p.13

References are to page numbers in the bundle provided for the hearing.

1. 97 King Charles Road, Surbiton, KT5 8PG (“the Property”) was a residential property comprising a converted block of three self-contained flats. The Property was converted in about 1970. All the flats were accessed via a communal staircase and entrance door at ground level. The Property had three storeys.
2. The Applicant is the freeholder, represented by the managing agent.
3. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and tenant Act 1985 (“the Act”) for retrospective dispensation from consultation in respect of works to remove asbestos found during external repairs. The estimated cost of works was provided to leaseholders on 4 July 2023.
4. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works or enter into a qualifying long-term agreement

which would result in the contribution of any tenant being more than £250. The cost which is the subject of the application exceeds this threshold.

5. By directions (p.23) dated 11 July 2024 ('the directions') the Tribunal directed that the Applicant had to serve the leaseholders with a copy of the application and of the directions. The Tribunal sent a copy of the directions to the Respondents on 11 July 2024.
6. The directions provided that leaseholders who oppose the application had to, by 9 August 2024, complete the reply form and sent to the Applicant and the Tribunal and sent to the Applicant a statement in response with copies of any documents they wished to rely upon. There was also provision for a response from the Applicant.
7. The Tribunal has not received a completed form from any leaseholder or sublessee.
8. The directions provided that the Tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The Applicant's case

9. A Stage 1 notice was served on 13 May 2022 (p.4) concerning external repairs and decorations. A Stage 2 notice was served on 3 August 2022 (p.7) for the same reason. A revised stage 2 notice was sent on 7 February 2023 (p.8). Leaseholders were informed that asbestos had been found on 30 May 2023 and they were later (4 July 2023) provided with quotes for the additional work carried out. The works were said to be urgent because of the health and safety risk posed to tenants and contractors by the presence of asbestos.
10. The application states that dispensation is sought for the additional charge of asbestos removal. The presence of asbestos was not known before works started, meaning the Applicant was unable to inform leaseholders of the additional charges. The asbestos survey and removal were required urgently as it posed a severe health and safety risk to the contractors working on site, as well as to the leaseholders/tenants living at the Property.
11. The Applicant's Statement of Case states that the contractor for major works found suspected asbestos, specifically in the panels at the side of the dormer windows, as well as in the roof tiles. In order for the works to continue, the managing agent had to assess the presence of asbestos so a survey was instructed. The survey came back with positive readings for asbestos which required removal before the work could proceed. The proposed contractor provided a quote for the works but they could not facilitate the project into their works programme, and they declined the work. The managing agent had to instruct a contractor to remove the asbestos from the Property due to the risk it posed. Due to the additional work, they were required to submit the application.

12. The asbestos was removed on 14 July 2023 by ARC. The revised external repairs and decoration were completed by 8 April 2024 (p.11).
13. The Tribunal has seen a Works Order dated 12 July 2023 for removal of asbestos in the sum of £8,445 plus VAT).
14. A copy of the lease (p.28) for Flat 1 (Mr. and Mrs. Spevack) has been provided (it is between Mendum Properties Limited and Mr. Sinclair and it dated 3 June 1977).
15. It requires a rent (among other things) if a proportionate part (to be determined according to the proportion which the rateable value of the demised premises from time to time bears to the aggregate rateable value of the units comprised in the building) of the expenses to the Landlord of carrying out the Landlord's obligations referred to in clause 5 and the cost of employing managing agents or other persons to carry out such obligations on behalf of the Landlord.
16. Clause 5 requires the Landlord (among other things) to maintain, repair, redecorate and renew the structure (including the foundations) and the main drains, roof, chimney stacks, gutters and rainwater pipes of the building.

The Respondent's case

17. No Respondent objected to the application.

The Law

18. Section 20ZA of the Act, subsection (1) provides:
"Where an application is made to a 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".
19. The Supreme Court in the case of *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of section 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *"it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements"*.

Determination and Reasons

20. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.
21. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* in reaching its decision.
22. Once the presence of asbestos was discovered, it did have to be removed and contractors would not continue with the planned works until it was removed. The Respondents were informed of the need for the works. There is no evidence before the Tribunal that the Respondents were prejudiced by the failure of the Applicant to comply with the consultation requirements.
23. The Tribunal is therefore satisfied that it is reasonable to grant unconditional retrospective dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985 in regard to the works set out herein.
24. The Tribunal make no determination as to whether the cost of the works are reasonable or payable. If any leaseholder wishes to challenge the reasonableness of the costs, then a separate application under s.27A Landlord and Tenant Act 1985 should be made.
25. It is the responsibility of the Applicant to serve a copy of this decision on all Respondents and to display a copy of this decision in a prominent place in the common parts of the Building.

Name: Judge S. McKeown

Date: 20 May 2025

Rights of appeal

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).