



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

Case reference : **LON/00AY/LDC/2023/0201**

HMCTS code : **P: PAPERREMOTE**

Property : **1-22 Harcourt House, Albion Avenue,
London, SW8 2AB**

Applicant : **The Mayor & Burgesses of London
Borough of Lambeth**

Representative : **Patrick Byfield
Ref: HOS/LIT/PBYFIELD/608409**

Respondents : **Various Leaseholders of Harcourt
Avenue, Albion Avenue**

Representative : **Not represented**

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

Tribunal member : **Judge Sarah McKeown**

Date of decision : **27 November 2023**

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and has not been objected to by any Respondent. The form of remote hearing was P:PAPERREMOTE. 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 78 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 the subject works, namely to repair a leak to the mains pipework, to prevent water ingress into the electrical intake cupboard.

The Applicant should place a copy of this decision together with an explanation of the leaseholder's appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent place in the common parts of the Property.

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 work.

The Application

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

1. The Applicant seeks (p.1) a determination pursuant to section 20ZA of the Landlord and tenant Act 1985 ("the Act") for retrospective dispensation from consultation in respect of the works set out above. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The cost of the works which are the subject of the application exceed this threshold.
2. The application was made without notice to the Respondents as the application was said to be urgent because of the immediate risk of electrical outage to the block or electrical fire. It was also said that there was the possibility of a total loss of mains water supply to the block.
3. By directions (p.62) dated 31 August 2023 ("the directions") the Tribunal directed that the applicant had to send to each of the leaseholders

(and any residential sublessees and any recognised residents' associations), by 22 September 2023, by email, hand delivery or first-class post:

- (a) Copies of the application form unless already sent by the applicant to the leaseholder/sublessee;
 - (b) If not already detailed in the application form, a brief statement to explain the reasons for the application; and
 - (c) The directions.
4. The Applicant also had to display a copy of the directions in a prominent place in the common parts of the property. The Applicant had to confirm compliance by 2 October 2023. They in fact confirmed compliance on 11 September 2023 (p.77).
5. The directions provided that leaseholders and sublessees who oppose the application had to, by 20 October 2023, 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. The Applicant also had to prepare a bundle which was to contain, among other things, a statement from the Applicant/landlord to explain the reasons for the applicant.
6. The Tribunal has received no completed form from any leaseholder or sublessee.
7. 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

8. The applicant is the freeholder (p.43) of the property, which is a purpose-built mixed terrace block of twenty-two 1-3 bedrooms flats, of which 14 are leasehold.
9. The specimen lease, which is for Flat 1, states that the freeholder covenants (cl. 3.2.2-3.2.3 – p.51) to repair, redecorate, renew, amend, clean, repoint and paint, among other things, the “sewers drains channels watercourses gas and water pipes electric cable and wires and supply lines in under and upon the Building” and “the boilers and heating and hot water apparatus (if any) in the Building or elsewhere...”.
10. In its application, which is dated 11 July 2023, and which was sent to the Tribunal on 12 July 2023, the Applicant explained that on 2 July 2023, the Applicant was notified of a leak on the lead mains pipework, located in one of the property's electrical intake cupboards. On the same day, a Work Order

was raised for the Applicant's qualifying long-term contractor (T Brown Limited) to attend and investigate the reported burst main and to install a temporary mains water supply as an emergency temporary repair. On 6 July 2023, the contractor quoted £5,076 for temporary works (which are detailed in the Applicant's Submissions (p.11) and in the document at p.21). A Justification Report (p.24) dated 11 July 2023 was produced as the Applicant was unable to provide the full consultation period given the urgency. Due to the location of the leak causing water ingress into the electrical intake cupboard, there was an immediate risk of electrical outage to the block of electrical fire. It was also said that there was the risk of pipeline rupture, which could have resulted in a total loss of mains water supply to the block. The temporary supply was installed over-ground but the temporary solution was not safe to be left *in situ* on a long-term basis due to the risk of rupture and flooding of communal areas if tampered with, potentially risking further outage and inconvenience to residents. It was also said that it was not good practice for a temporary supply to be left open to the elements. For those reasons, it was said that a permanent relay of pipework needed to be installed without delay. The contractor quoted £13,444.97 for the permanent works (detailed in the Applicant's Submissions and in the document at p.35).

11. The estimated cost for the temporary works was estimated to be £5,076.00 and the estimated cost for the permanent works was £13,444.97. The temporary works were done on 6 July 2023 and the permanent works were done on 11 July 2023.
12. The application states that the Applicant wrote to the leaseholders on 10 July 2023 (p.38) explaining why the works were required, what their estimated contribution was expected to be, and that the Applicant would be applying to the Tribunal for retrospective dispensation. The Applicant invited written observations in relation to the proposed works by 24 July 2023. It also provided a FAQ sheet.

The Respondent's case

13. No respondent objected to the application. One of the leaseholders (12a) did email the Applicant on 19 July 2023 asking for some further information (p.69) and this information was provided on 25 July 2023 (p.70). The leaseholders of a further property (3) emailed the Applicant on 28 July 2023 (p.74) asking why the repairs were not covered by the insurance. The Applicant responded to that email on 2 August 2023 (p.75).

Determination and Reasons

14. Section 20ZA(1) of the Act provides:
"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."

15. 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.
16. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 in reaching its decision.
17. There is no evidence before the Tribunal that the Respondents were prejudiced by the failure of the Applicant to comply with the consultation requirements. The Tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the subject works, namely to repair a leak to the mains pipework, to prevent water ingress into the electrical intake cupboard.
18. Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application. 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 costs of the works.

Judge Sarah McKeown
27 November 2023

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).

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;

- set aside and re-decide the decision or refer the matter to the Upper Tribunal;
- decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

*5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL*

Tel: 0207 612 9710

Goldfax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.gov.uk/appeal-upper-tribunal-lands.