



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

Case reference : **P/ LON/00BG/LDC/2020/0182**

Property : **Luxon House, 477 Roman Road, London
E3 5LX**

Applicant : **Fountain Acquisitions Ltd (the
landlord)**

Representative : **CS Estate and Property Management
Ltd.**

Respondent : **The leaseholders of flats
Flat 1: Mr M Browne
Flat 2: Mr A Siddique
Flat 3: Mr J Knight**

Representative : **Not applicable**

Type of application : **For dispensation from statutory
consultation**

**Tribunal
member(s)** : **Judge Dickie**

**Date of
determination** : **6 April 2021**

DECISION

Decisions of the tribunal

The application for dispensation is granted without conditions in respect of works to repair the top roof, mansard roof and dormer windows and lower flat roof, as set out in paragraph 15 of this decision.

The application

1. The premises are a terraced townhouse with retail unit on the ground floor with 3 flats above.
2. The managing agent on behalf of the landlord has made an application for a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“The Act”) dispensing with statutory consultation in respect of major roof works.
3. It is the landlord’s case that the works are urgent because dampness caused by the leak from the roof has accelerated, causing water to run down directly into flat 3. Dampness had affected the communal areas on the first and ground floors as well as down through to the retail unit on the ground floor.
4. The application did not describe the qualifying works in respect of which dispensation from the statutory consultation procedures was sought. The application stated that it had been very difficult getting quotes during the recent months due to COVID-19, that quotations were being gathered, and that the flat roof areas will need to be replaced. It is said that a number of roofers have been approached to provide quotations and outline the works required.
5. The applicant also stated that reports from the tenants of the top flat have confirmed serious leaks through the ceiling of this flat with electrical safety compromised and the need for immediate action confirmed. The application stated that the works have not been commenced.
6. The application dated 14 October 2020 was incomplete, and on 10 December 2020 the tribunal asked the applicant to provide
 - (i) the names of all residential lessees in the block
 - (ii) details of how it had complied so far (if at all) with the consultation procedures under s.20 Landlord

and Tenant Act 1985 including any notifications sent to the tenants

(iii) the reason for the urgency of the works

(iv) the approximate costs of the works

7. The applicant responded on 16 December 2020 with the names of the residential leaseholders and in response to the other questions said:

(i) We have communicated several times with the leaseholders of the flats and the commercial unit following the leakage and dampness occurring. This leakage became far more severe recently and they were all informed of the urgency of the work and that an application for dispensation major works may be required. They were contacted individually and informed of how this process works.

(ii) Although the leaks were initially affecting the communal areas only with limited damage, this all became far more severe following a serious leak into Flat 3 on the top floor. This created electrical risks and a serious health and safety threat to the tenants, with water running right down to the commercial unit as well. There has since been another substantial increase in the leakage and dampness to Flat 2 and to the commercial unit, again causing serious electrical risks. Temporary cover has since been agreed with the leaseholders and provided to try to make the cause clearer. Photographs of the two dormer windows covered with a battened temporary tarpaulin were included.

(iii) A number of contractors had attended over the past year to identify the absolute cause. However, this has proved to be challenging as they have been unable to identify the precise cause of the leakage and consequently quotations for the works are not yet available. The applicant hoped that the temporary cover, if successful will help with the diagnosis of the works needed.

8. In respect of the temporary works, the tribunal has been provided with a copy of a letter to the leaseholders dated 9 November 2020 stating that:

“On completion of this temporary work, further investigations will continue to be conducted to identify precisely the sources of the leakage for all areas affected. Contractors will then be provided with the specific works required so that comparable quotations are presented to Cornerstone for discussion with the leaseholders.”

9. The tribunal served a copy of the application on the respondents. The applicant confirms that it has on 5 January 2021 served a copy of the application and the tribunal's directions issued on 18 December 2020 on each of the leaseholders and arranged for their display in the common parts of the block on 7 January 2021. Those directions were for the preparation of the case for a determination on the papers in the week beginning 15 March 2021, and they explained how any leaseholder might object to the application, and that they could request an oral hearing. No party has exercised their right to request an oral hearing of the application. The tribunal has therefore proceeded to reach a decision on the documents and without a hearing, having given notice of its intention to do so. An inspection of the premises by the tribunal was not necessary.
10. The applicant submitted a bundle for the use of the tribunal in reaching its determination. That bundle did not include the applicant's response dated 16 December 2020 to the tribunal's letter of 10 December 2020. Within the bundle there is a document dated 3 February 2021 called “Update on 477 Roman Road s.20”. That document explained that the leak to the ground floor commercial unit was not related to the leak from the roof to the flat below, and only the latter was relevant to the application to the tribunal. It referred to the temporary works having been carried out on 21 November 2020 at a cost of £300 plus VAT and the leaseholders advised by email on 24 November 2020. A quote for £13,200 inc. VAT from MJ Beddows for further roof works dated 12 January 2021 had been obtained and produced to the tribunal.
11. Also in evidence in the applicant's bundle is a letter to the leaseholders dated 21 January 2021 stating that further quotes are being obtained using the project plan in the Beddows quote and that the temporary works were holding off the leak as hoped. It appears that the Beddows quote was not provided to the tenants at that point, and that they were advised the quotes would be provided to them once at least two were available.

12. Thereafter further quotes were delayed owing to access restrictions associated with the Covid 19 pandemic.
13. The applicant filed further late evidence with the tribunal, in the form of a copy of a letter to the leaseholders dated 13 March 2021 which encloses two estimates for roof works. It provided a summary of two quotations – MJ Beddows at £21,120 including VAT but excluding scaffolding costs, and Atlas Home Improvements £17,400 including VAT and scaffolding. The roof works to be carried out are not specified. The estimates are referred to as being attached, but were not in fact provided to the tribunal.
14. Considering the papers, further directions were issued to the parties on 19 March 2021 requiring the applicant to send to the tribunal and to the respondents by 24 March 2021:
 - (i) a short summary description of the works in respect of which dispensation from statutory consultation is sought, as this is not in the application.
 - (ii) a copy of both quotes from MJ Beddows showing any difference in the scope of works, and a copy of the Atlas quote.
15. The applicant complied with this direction in a letter dated 22 March 2021 to the tribunal, which it said had been copied to the leaseholders. The applicant provided the following summary of the works, based upon the advice of the contractors that the top flat roof of the building should also be included due to poor workmanship and the potential for leakage (further photographs of the roof being provided):
 - Top Roof of Building
 - Remove all existing surface and replace with all necessary new materials
 - Replace all necessary lead flashing
 - Mansard Roof and Dormer Windows (Flat 3)
 - Remove and replace all damaged sections of the mansard roof
 - Repair and repaint window frames
 - Fit new decking to dormers where required
 - Supply and fit new felt and leadwork where required
 - Lower Flat Roof (Flat 3)
 - Remove current roofing and prepare surface
 - Supply and fit all replacement timber
 - Lay new felt surface and re-render where necessary

16. Any respondent was given the opportunity to make written submissions to the tribunal by Monday 29 March 2021, with a copy to the applicant. No respondent leaseholder has done so, and indeed none has objected to the application.

Decision and Reasons

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

“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.”

18. The tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.
19. It appears that no part of the statutory consultation procedure with the leaseholders was carried out. The tribunal has taken note of the fact that no leaseholder has taken the opportunity to object to the application or to make any submissions to the tribunal.
20. There is therefore no evidence before the tribunal opposing the application which could suggest that the work ought to have been the subject of full statutory consultation.
21. No evidence has been put forward of prejudice to the leaseholders or other grounds on which the tribunal ought to consider refusing the application or granting it on terms.
22. Application under s.20ZA of the Landlord and Tenant Act 1985 to the tribunal is to dispense with the statutory consultation procedure which the landlord would otherwise have to carry out. The tribunal may make the determination if satisfied that it is reasonable to dispense with the consultation requirements. No decision on this application affects the tribunal’s jurisdiction upon an application to make a determination under section 27A of the Act in respect of the reasonable and payable cost of the work, should this be disputed by any leaseholder.
23. The applicant has not comprehensively articulated the grounds for dispensation with the statutory consultation procedure since the temporary works carried out at low cost in November 2020 and the dampness in the commercial premises was understood to be unrelated. However, the tribunal has considered the photographic evidence and the contents of the quotations and other documents, and on balance is

satisfied that there is an ongoing risk of leaks which justifies prompt action at this stage, and there is added weight for this conclusion given the lack of disagreement by the leaseholders.

24. The tribunal finds there is sufficient uncontested evidence of the necessity to carry out the work urgently. In all the circumstances, and in light of the absence of objection, the tribunal considers it reasonable to grant the application for dispensation from statutory consultation in respect of the works as specified by the applicant. No conditions on the grant of dispensation are appropriate and none are made.

Name: Judge F Dickie

Date: 6 April 2021

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).