



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

Case reference : **LON/00BK/LDC/2021/0253**

HMCTS Code : **P:PAPERREMOTE**

Property : **Spire House, Lancaster Gate,
London W2 3NP**

Applicant : **Eastern Pyramid Group
Corporation SA**

Representative : **Watson Farley & Williams LLP**

Respondents : **The Leaseholders of Spire House,
Lancaster Gate, London W2 3NP**

Representative : **Foot Anstey LLP (for Spire House
RTM Co Ltd)**

Type of application : **An application for dispensation
from the consultation
requirements of s.20 Landlord and
Tenant Act 1985**

Tribunal member : **Judge D Brandler**

**Date and venue of
hearing** : **9th December 2021
10 Alfred Place, London WC1E 7LR
(remotely)**

Date of decision : **9th December 2021**

**Date decision amended
under the slip rule** : **17th December 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that I was referred to are in an electronic bundle prepared by the applicant containing 329 pages. References in this decision are to page numbers in square brackets. The order made is described at the end of these reasons.

Decision

1. The Tribunal grants the applicant dispensation from the statutory consultation requirements in respect of remedial works to the tower and spire at Spire House, Lancaster Gate, London W2 3NP ("The building").

Background to the Application

2. The Tribunal did not inspect the building as it considered the documentation and information before it in the appeal bundle enabled the Tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
3. This has been a paper hearing which has not been objected to by the parties. The Tribunal had before it an electronic bundle prepared by the applicant in accordance with the Tribunal's directions issued on 25th October 2021 [268].
4. The applicant landlord seeks 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 remedial works to the tower and spire at the building further to loose masonry having fallen from those structures.
5. Further to masonry falling from the tower and spire, the Applicant instructed Stone Technical Group Service Ltd ("Stone") to inspect those structures and to produce a report. This was carried out and Stone produced a detailed report dated 5/5/2021 ("the 2021 report") [142], which updates their 2018 report.
6. The conclusion of the report is that *"the spire and tower require urgent attention and remedial action. The condition of the spire, in particular the pinnacles, is of great concern and poses a significant Health and Safety threat due to the eroded bed joints, fissuring masonry and inappropriate mortar being used in the past....has caused major delamination to the stone it surrounds which will at the very least lead*

to sizeable sections of mortar becoming detached from the stonework and subsequently falling....” [242].

7. The works were said to be urgent to safeguard against risks to the residents and visitors of the building as well as to the public [7]. The works required include the erection of a protective scaffold and fan to the subject property’s tower with netting to the tower’s spire and the removal of the tower’s pinnacles, which appear to be unstable. The Applicant intends to undertake the works imminently without delay due to the potential health and safety risks which could arise from any delay [9].
8. The Building Control department of the London Borough Westminster has become involved due to the potential health and safety risk and by their email dated 24/06/2021 they confirm *“the most important issue is to remove any imminent risk of harm to others, please proceed with option 1 and then we could have a closer inspection and discussion about the remedial works with your surveyor” [244].*
9. The building is a residential unit containing 23 separate flats over 6 floors with a residents’ car park. It comprises 3 separate freehold titles, as particularised below:
 - (a) A modern structure which contains the individual flats demised to the Respondents registered under title number NGL340642 (“the new building”) of which the Applicant is the registered proprietor of the freehold interest.
 - (b) The entrance to the new building which is via the historic church’s grade II listed Gothic tower and spire (“the tower”), is registered under title number NGL899611. The tower’s freehold interest vests in the London Diocesan Fund. The Applicant is the registered proprietor of its leasehold interest under title number NGL354268 held pursuant to a lease dated 3 April 1979 between The London Diocesan Fund and the Applicant.
 - (c) The freehold to a communal garden enclosure adjacent to the new building and the tower, (“the garden”) is registered under title number 359070 and vests in the London Diocesan Fund. The Applicant is the registered proprietor of the Garden’s leasehold interest. [13]
10. The leaseholders have been informed of the requirement to carry out works to the tower and the spire and the application for dispensation was hand delivered to them.
11. The parties have been in correspondence in relation to the issue of the works. In their letter dated 15/07/2021, the respondents’

representative writes under the heading of urgency: “...our clients, of course, do not object to emergency works being undertaken to ensure the protection of property or persons. Our clients expect your client to undertake any necessary emergency works in line with its responsibilities to ensure safety. Our clients do, understandably, have some questions as to how this situation has arisen...” [259]. However, the letter goes on to state that the Respondents are not in a position to consent to any particular costings.

The leaseholders’ case

12. The leaseholders do not object to the urgent works being carried out by the Applicant [259].

Reasons for Decision

13. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
14. Having read the evidence and submissions from the Applicant and noted that the Respondents do not object to urgent works being carried out, the Tribunal determines the dispensation issues as follows.
15. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
16. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
17. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;
 44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for

inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT 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.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.
18. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
19. The Tribunal is of the view that, taking into account that no objection has been received from any of the leaseholders, it could not find prejudice to them by the granting of dispensation relating to the remedial roof works, as set out in the application.
20. As stated above, the only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
21. The Tribunal grants the Applicant dispensation from the statutory consultation requirements in respect of remedial works required to the tower and the spire at Spire House, Lancaster Gate, London W2 3NP ("The building").
22. The Tribunal makes the following condition of such dispensation as set out in paragraph (23) below.
23. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on all leaseholders of the flats as well as to any the leaseholders' representative(s) who are on the record.

Judge D Brandler

9th December 2021

Amended under the slip rule on 17th December 2021

APPENDIX 1
RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—

- (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.

- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.