



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

**Case reference** : **LON/00AM/LDC/2020/0210**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **11 King Edward's Road, Hackney,  
London E9 7SF**

**Applicant** : **King Edward's Road Freeholder Limited**

**Representative** : **Aldermartin Baines & Cuthbert t/a ABC  
Estates (Managing Agents)**

**Respondents** : **THE LEASEHOLDERS OF THE FLATS  
AT THE PROPERTY, AS LISTED IN THE  
APPLICATION**

**Representative** :

**Type of application** : **An Application for a Dispensation Order  
pursuant to section 20ZA of the  
Landlord and Tenant Act 1985**

**Tribunal member** : **JUDGE SHAW**

**Venue** : **PAPER DETERMINATION**

**Date of decision** : **22<sup>nd</sup> February 2021**

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**DECISION**

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### **Covid-19 pandemic: description of hearing**

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing code and description was: P:PAPERREMOTE. A face-to-face hearing was not held because none of the parties required such a hearing, and all the issues could be determined in a remote hearing, on paper. The documents submitted to the Tribunal will, as necessary, be referred to below, and all papers submitted have been perused and the contents considered. The order made is described at the end of these reasons.

### **Decision of the Tribunal**

The Tribunal determines that an order dispensing with the consultation provisions under section 20 of the Landlord and Tenant Act 1985, is appropriate in this case, and makes such order.

### **The Application**

1. An Application dated 29<sup>th</sup> October 2020 has been received in which the Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) . . . .]

### **The Hearing**

2. The Applicant sought a Paper Hearing, which was, as stated above, not objected to by any the Respondents.

### **The Background**

3. The application concerns the property at 11 King Edward’s Road, Hackney, London E9 7SF, which is a terraced house converted into 6 flats. The Respondents are the leaseholders of the flats, and presumably some or all of them are officers of, and shareholders in, the Applicant company, through which the property is managed, via managing agents. Directions were given by the Tribunal on **8<sup>th</sup> December 2020**. The background stated in those Directions is sufficiently comprehensive for present purposes, and for ease of reference, is repeated herein as follows.

4. The landlord/applicant has applied for dispensation from the statutory consultation requirements in respect of works to preserve the fabric of the building and to avoid water ingress to flat A. The applicant says that the high level main roof is leaking into Flat A and causing major water ingress and ongoing issues. The felted (valley) area behind the rear high level parapet walls also are degraded and leaking into the flat and need to be removed and replaced. Works which are required are: 1. Scaffolding or harnesses and edge protection 2. Removal of the tiles from the pitched roofed area. 3. Removal of the old asphalt 4. Reapplication of new felts and lead flashings and retiling as necessary.
5. The Application is said to be urgent because long-term water penetration is causing significant damage to the fabric of the building. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements.
6. The Applicant's case is set out in an expanded statement for the purposes of this application, which essentially asserts the following chronology: On 3rd October 2020 there was notification by the lessee of Flat A that the parapet valley was leaking into Flat A. A contractor of Sinclair Builders set up a video call to confirm where the leak was coming from. The agents then arranged for a contractor of CJAP Builders to attend. Next, the Applicant's agents notified all lessees of the leak from the parapet valley on 26th October 2020 and that CJAP Builders were due to attend. On 26th October 2020 Philip Adams (leaseholder of Flat C) emailed the agents, querying whether the leak had been evidenced. The agents responded with a confirmation on 27th October. On 27th October 2020 they issued a Part 1 Section 20 Notice as the works would exceed the section 20 threshold and applied to the Tribunal for Dispensation from the section 20 consultation process on the 29th October 2020. The agents received an email with photos of the leak on 15th November from Pauline Mason of Flat A. In addition, they received estimates in December for the roof works and on 24th December 2020 they issued the Part 2 Section Notice. They e-mailed all lessees on 24th December 2020 a copy of the application and directions, and both notices were displayed in the communal area on the 5th January 2021. Philip Adams sent his objection to the agents on the 19th January 2021 to which

they responded on the 25th January. He submitted further responses on 28th January and they responded on the 4th February 2021.

7. The effect of Mr. Adam's objections, as appearing in those exchanges, was that he was not persuaded that there was evidence of urgency for the work (at least not disclosed to him), and moreover he considered the work being proposed too extensive and costly. He produced 2 alternative estimates of cost, in the sums of £1950 (inclusive of VAT) and £1536 (inclusive of VAT) as compared with the Applicant's costing of £5000 exclusive of VAT. He has produced schedules comparing the separate quotations.
8. The Applicant's agents countered that the affected flat, flat A, urgently required to be restored to a watertight condition so that it would be safe for occupation. A disabled child lived in Flat A and since both occupants were at the time shielding due to the pandemic, it was important that the flat be restored to a safe and dry state, as the occupants would be spending all their time at home. They also pointed out that Mr. Adam's estimates were some 2 years out of date, having been obtained in 2018, and did not reflect the work which they, the agents, asserted was required.

### **The Tribunal's Decision**

9. The Tribunal determines that it is reasonable to dispense with the consultation provisions of section 20 of the Act, pursuant to section 20ZA thereof, and in relation to the works set out above and identified in the Application. A dispensation order to this effect is therefore made, as set out below.

### **Reasons for The tribunal's Decision**

10. As mentioned, Directions in this case were given on **8<sup>th</sup> December 2020**. In those Directions, the Respondent leaseholders were given the opportunity both to request an oral hearing and to object to the roof works. None of the leaseholders have objected to this work, save for Mr Adams. He is concerned

that the works are overpriced and more extensive than required, and that they lack urgency. He will have the opportunity to argue those points, supported by evidence, in the context of a section 27A application, if he so wishes. The sole issue for this Tribunal is whether it is reasonable to dispense with the full consultation process. The Tribunal is satisfied on the balance of probabilities that it would be so reasonable. First, this is a case of water seeping through to the interior of a flat – the Tribunal has viewed the photographic evidence produced showing a plastic bag filling with water adjacent to an electric light fitting – making the water incursion all the more concerning. The leakage is causing continuing internal and external damage. The flat was (and perhaps remains) occupied by an adult and a disabled child self-isolating during the pandemic, and who are therefore in the flat continuously. This cannot be a satisfactory arrangement during which to await the outcome of full consultation, and it seems to the Tribunal that the work was manifestly urgent. Whether too much work was, or is to be, undertaken, and whether the costs are too high, will be matters which can be challenged at a later date if thought appropriate, and do not concern this Tribunal in the context of this application. The possible health and safety risk to occupants of the top flat, and the continuing damage if full consultation were to be pursued, make it reasonable to proceed with the works before the full consultation procedure has been complied with.

## **11. DECISION**

For the reasons set out above, the Tribunal determines that it is reasonable to dispense with the consultation provisions of section 20 of the Act, pursuant to section 20ZA thereof, and in relation to the works described in the estimate supplied and supporting the application. A dispensation order to this effect is therefore made. It should be understood that nothing in this Decision precludes the entitlement of any of the Respondents to challenge the cost, quality, reasonableness or payability of service charges for these works, under the provisions of section 27A of the Act, should they have reason or desire to do so after the works have been completed.

**Name:** JUDGE SHAW

**Date:** 22<sup>nd</sup> February 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.