



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

Case reference : **LON/00AM/LDC/2022/0131**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **118-124 Stoke Newington High Street, N16 8EL**

Applicant : **St Marylebone Property Co Ltd**

Representative : **Eddisons Commercial Ltd
(Managing Agents)**

Respondents : **The lessees listed in the schedule to the application**

Type of application : **To dispense with the requirement to consult leaseholders**

Tribunal Member : **Judge N Hawkes
Mr J Naylor MRICS**

London Panel : **10 Alfred Place, London WC1E 7LR**

Date of paper determination : **14 September 2022**

DECISION

PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a digital bundle of 193 pages. The order made is described below.

Decisions of the Tribunal

The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of any work which is necessary to ensure the public safety of the chimney stacks at the Property whilst a statutory consultation is carried out.

Background

1. The Applicant has applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to 118-124 Stoke Newington High Street, N16 8EL (“the Property”).
2. The proposed work is described more fully in a bundle which has been prepared on behalf of the Applicant for the paper determination.
3. The Tribunal has been informed that the Property comprises six residential flats about ground floor commercial units.
4. The application is dated 12 July 2022 and the Respondent lessees are listed in a schedule to the application.
5. Directions of the Tribunal were issued on 27 July 2022.
6. The Applicant has requested a paper determination. No application has been made by any of the Respondents for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 14 September 2022.
7. Photographs have been provided in the Applicant’s bundle and the Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute.

The Applicant’s case

8. In the application, the Applicant states:

“Dispensation from the section 20 consultation procedure is sought to remedy the three main chimney stacks that are located centrally on the roof, as immediate action is required to address the health & safety risks associated with their poor structural condition.

Dispensation is also sought for any additional hazardous defects which may arise during the investigations and works relating to the approved application: LON/00AM/LDC/2021/0317, to cover any urgent works which may be required to resolve any further health and safety risks that could arise.”

9. The Applicant relies upon a letter dated 11 April 2022 from Breijesh Chavda of David Smith Associates, Consulting Structural and Civil Engineers, in which it is stated:

“Thank you for your request for us to carry out a Brief Visual Structural inspection of the above property. We confirm having visited the site on Monday 21st February 2022 and a follow up visit on Wednesday 30th March 2022.

It is a condition of this report that we have not inspected structural works or other parts of the structure that are covered, unexposed or inaccessible and we are therefore unable to report that such parts of the properties are free from defect.

The roofs to the properties are a pitched roof, with a slate tile finish. To the rear of the properties 2No. 560 mm by 560 mm by 110 mm high chimney stacks are present. 3No 3500 mm by 560 mm by 150 mm high chimney stacks are present. Two of the chimney stacks are located on the gable ends and one located centrally to the properties.

The purpose of the visit was to inspect the current condition of the chimney stacks in question. We can confirm that the chimney stacks to the three properties are in poor condition with cracks in the mortar and the brickwork. At present, the chimney stacks are out of plumb of approximately 6” – 8” and its centre of gravity is now outside of the middle third. Structurally this is an immediate cause of concern as the chimney stacks are now unstable.

During inspection, it was noted that cracks were identified to the flaunching which can result in spalling of the mortar joints. The spalling and cracks in the flaunching can be caused by a combination of weather conditions and lack of strength over time between brickwork.

We recommend the following options for the chimney stacks.

Option 1

We recommend that the chimney stacks are all rebuilt, and flaunching is applied to the top of the chimney stack. This will allow water to run off and not build up to the top face of the brickwork. Lead flashing is to be secured to the bottom of the chimney stack to allow water runoff into the roof drains. Additionally, we would also recommend preventing movement within the brickwork, helibars are laid flat between the mortar joints at every two courses of brickwork.

Option 2

The current chimney stacks are reduced in height by two thirds and rebuilt. Similar to option 1, flaunching is applied to the stop of the chimney stacks and helibars are laid flat between the mortar joints at every two courses of brickwork.

In addition to the above, a brief inspection of the front parapet showed that the wall has moved from the previous visit in May 2021. The small parapet walls between the roof structures are separating from the front parapet. As stated on our drawing previously issued, the front parapet is to be rebuilt.”

10. By letter dated 18 August 2022, the Applicant states that Option 2 “is dependent upon planning approval”.

11. By email dated 15 July 2022, the Applicant’s managing agent states:

“The contractor has submitted budget costs to completely re-build the chimney stacks. The additional cost is £58,357.38 plus VAT. Note this doesn’t include any scaffolding adaptations. Due to the level of this cost, we are obtaining a check price from one of our other building contractors. We have also asked Giles Oliver to provide a price for the reduced chimney stacks. “

The Respondents’ case

12. None of the Respondents has submitted a reply form and/or made representations to the Tribunal.

The Tribunal’s determination

13. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.

14. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered

from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

15. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
16. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination **if satisfied that it is reasonable to dispense with the requirements.**
17. The letter from David Smith Associates stating “*Structurally this is an immediate cause of concern as the chimney stacks are now unstable*” which is relied upon by the Applicant in support of this application is dated 12 April 2022 and the application for dispensation is dated 12 July 2022. A full statutory consultation typically takes around three months to complete.
18. Accordingly, there was potentially sufficient time for the Applicant to fully consult the lessees between the date of the letter and the date of this application for dispensation from the statutory consultation requirements. A full statutory consultation could have been completed long before the date of this determination.
19. The Applicant has provided no evidence explaining why, if there was immediate cause for concern, no application was made to the Tribunal until three months after the date of the letter of 12 April 2022 or explaining why no full or partial statutory consultation was carried out in the meantime. We note that the estimated cost of the proposed work is said to be in excess of £58,000.
20. Further, the Applicant has not explained why this application is made in respect of the entirety of the proposed work (including an option which will require planning approval) rather than in respect of the minimum work necessary to make the chimney stacks safe, for example, work to brace the chimney stack whilst a full statutory consultation is carried out.
21. The request for dispensation for “the remedying of any additional hazardous defects or health and safety risks which may arise during investigations and works” relating to both this application and to another application, is extremely broad.
22. In all the circumstances and on the evidence available, the Tribunal is not satisfied that it is reasonable to grant dispensation in the broad terms sought by the Applicant. However, the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of any work which is necessary to ensure the public safety of

the chimney stacks at the Property whilst a statutory consultation is carried out.

23. The Applicant may carry out work on this basis immediately if it is necessary to do so in order to ensure public safety and/or if the Applicant considers this determination to be sufficiently clear. Alternatively, the Applicant may **as soon as possible and by no later than 21 September 2022**, serve on the Tribunal and on the Respondents a specification or more detailed description of the work is considered to be necessary to ensure the public safety of the chimney stacks at the Property whilst a statutory consultation is carried out. The Respondents may serve on the Applicant and on the Tribunal any representations **within 7 days of the date of service** and the Tribunal will then determine whether to grant dispensation in respect of the specification or more detailed description of the work.
24. If a further determination is required as a matter of urgency and the Tribunal members are not available, any application for a further determination on the basis of a specification or more detailed description of the work which is considered necessary to ensure public safety of the chimney stacks at the Property whilst a statutory consultation is carried out may be released to a differently constituted Tribunal.
25. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge N Hawkes

Date: 14 September 2022

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).