



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

Case Reference : **LON/00AN/LDC/2022/0002**

Property : **13 Ongar Road, London SW6 1RL**

Applicant : **Orchidbase Limited**

Representative : **Mr Paul Barrett**

Respondents : **The long leaseholders listed in Appendix (i) to the application form**

Representative : **No appearance**

Type of Application : **Application for dispensation under s.20ZA of the Landlord and Tenant Act 1985**

Tribunal Member : **Judge W Hansen (chairman)**

Date and venue of Hearing : **14th March 2022 (Paper Determination)**

Date of Decision : **14th March 2022**

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that the consultation requirements in relation to repairs to the ground and first floor flat at 13 Ongar Road, London NW6, and in particular the work set out in the Schedule of Work at pages 30-32 of the application bundle, be dispensed with on terms that the costs incurred in relation to this application for dispensation shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants;
- (2) The Tribunal records that this is not a determination in relation to the reasonableness of the costs of the said works.

The Application

1. By an application dated 1 December 2021 the Applicant seeks a dispensation order under section 20ZA(1) of the Landlord and Tenant Act 1985 (“the 1985 Act”). The Applicant is the freehold owner of 13 Ongar Road, London SW6 (“the Property”). The Property is a mid-terrace house that has been converted into 4 flats. The Respondents are the long leaseholders.
2. The application relates to what are said to be “*water-damaged structural timbers which require replacing as the current state pose a serious health and safety concern*”. The grounds for seeking dispensation include the following: “*The structural integrity of the building is a serious health and safety concern*”.
3. The brief facts are these. The lessee of the ground floor flat was in the course of undertaking works to her flat when it became apparent that there were significant problems associated with water ingress from the first floor flat. The freeholder became involved and an inspection was arranged for 18 November 2021. The persons in attendance were Mr Bridgewater of De Beauvoir Property Management Limited, a building surveyor, the lessee of the ground floor flat and a structural engineer, Tanya Kosanovic MEng CEng MStructE, of Martin Redston Associates. Inspection of the timber beams and floor joists revealed significant problems with the internal joinery.

Mr Bridgewater has prepared a report dated 24 November 2021. His report describes significant damage to a large structural hardwood beam, horizontally positioned into the party wall and rear outrigger wall. In particular, wet rot timber decay was noted to most of the large structural beam, timber floor joists and timber battens as well as “*significant wood boring beetle infestation to most of the internal joinery*”. It was Mr Bridgewater’s opinion, as set out in his report dated 24 November 2021, that “*without the introduction of new materials to the ground floor flat, particularly the large structural hardwood beam, floor joists and timber battens to the rear kitchen, there is a significant risk to the structural integrity of the rear elevations and the flats above*” and he recommended urgent structural repairs to both the ground floor and first floor flats. He referred to the consultation requirements contained in s.20 of the 1985 Act but suggested that dispensation from these requirements be sought on the basis that “*the works in question are a health and safety risk, as they relate to a reduction in structural stability to the main building, particularly the rear elevation*”. He concluded his report by recommending that a schedule of repairs be prepared and competitive tenders sought and he set out, in an executive summary, a list of works to be included in a schedule of works subject to client approval. Ms Kosanovic prepared a report dated 26 November 2021 to like effect. She described the fact that “*the beam supports the first floor bathroom floor, a small portion of second floor and two storey high 225mm high solid wall*” and described the extent of the damage to the beam as “*extreme*”. As a result she recommended that the beam be replaced with a new steel beam.

4. Each of the Lessees were then written to in identical terms on 26 November 2021 and given details of the recommendations for the necessary repairs. The letter explained that due to the extent of the repairs, the freeholder would be “*stepping in to facilitate the works*”. The letter also explained that a competitive tendering exercise was to be undertaken and that “*as soon as we have the costs back from the contractors, a tender summary will be provided to you confirming costs and lead times for the works*”.
5. A Schedule of Works (pp. 30-32) was duly prepared and 5 contractors were invited to tender. Four replied, the lowest of which was from WM Construction Limited in the sum of £31,704. A tender analysis was undertaken by Mr Bridgewater who recommended that WM Construction Ltd’s tender in the sum of £31,704 be accepted. It is not clear from the papers before me whether in fact the client has accepted that recommendation and/or what stage has been reached with the works.

6. On 18 January 2022 the Tribunal issued directions inviting any lessees who objected to the application to file and serve statements in response by 15 February 2022 with provision for a reply by the landlord by 22 February 2022. The parties were also informed that the Tribunal would deal with the matter by way of a paper determination unless any party requested a hearing by 1 March.
7. The Applicant has confirmed that it has not received any responses to the application. It is therefore unopposed. Nonetheless, I must still consider whether it is reasonable to dispense with the consultation requirements.
8. I am entirely satisfied that it is reasonable to dispense with the consultation requirements in relation to the works set out in the Schedule of Works. The problems uncovered in relation to the internal joinery, and in particular the extent of the damage to the structural beam, are such as to compromise the structural stability of the Property and create a real and immediate health and safety concern. Further delay would lead to further damage and increased remedial costs for the repair works, as well as creating a risk to the occupants of the Property. No prejudice has been identified by the lessees and I am satisfied there is none.
9. I therefore dispense with the consultation requirements in relation to these works, but on terms that the cost of this application is not passed on to the tenants via the service charge. A dispensation on these terms is usual following *Daejan v. Benson* [2013] 1 WLR 854 and I consider it appropriate on the facts of this case.
10. For the avoidance of doubt, this determination relates *only* to the issue of dispensation and is not a determination in relation to the reasonableness of the costs of the said works.

Name: Judge W Hansen

Date: 14 March 2022