



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

Case Reference : **LON/00BK/LDC/2015/0123**

Property : **101 Shirland Road, London W9 2EL**

Applicant : **Jubilee Securities Limited**

Representative : **Parkgate Aspen (managing agents)**

Respondent : **Various Leaseholders**

Representative : **Unrepresented**

Type of Application : **To dispense with the requirement to consult lessees about major works**

Tribunal Members : **Mr Jeremy Donegan (Tribunal Judge)
Mr Neil Martindale FRICS (Valuation Member)**

Date and venue of Determination : **25 November 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 November 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of remedial works to the access walkway (“the Qualifying Works”) at 101 Shirland Road, London W9 2EL (“the Building”). Further details of the Qualifying Works are to be found in the attached copy report of John E Foster & Partners dated 23 October 2015 and accompanying drawing.
- (2) No terms are imposed on the grant of dispensation.

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 27 October 2015 and directions were issued on 30 October 2015.
2. The directions provided that the case would be determined upon the basis of written representations, unless any of the parties requested an oral hearing within 7 days. There has been no request for an oral hearing and the paper determination took place on 25 November 2015.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Building is a three-storey terraced house that has been converted into three self-contained flats. The Applicant is the freeholder of the Building and also owns two of the flats. The leaseholders of the third flat, which is on the second and third floors, are L Volpi and C Russo.
5. The Applicant seeks prospective dispensation in relation to the Qualifying Works, which are said to be urgent.
6. The Applicant set out the grounds for seeking dispensation at paragraph 10 of its application, which is set out below:

“The external pathway is caving in underneath the walkway in the gas cupboard and the walkway is resting on the gas inlet supply pipe to the meter in the basement flat. This needs to be rectified as soon as possible. We do not envisage any argument from the leaseholders as the reason for doing the work and urgency is known to them”

7. The Applicant’s managing agents produced a bundle of documents that contained copies of the application, directions, a sample lease, the

of John E Foster & Partners, photographs, correspondence sent to the Respondents and tenders for the Qualifying Works.

8. Paragraph 6 of the directions required the Respondents to complete and file response forms with the tribunal, if they wished to oppose the application. None of the Respondents has opposed the application or filed any statement in response to the application.
9. The tribunal has determined the application based upon the various documents contained in the Applicant's bundle.

The tribunal's decision

10. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act, in respect of the Qualifying Works. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

11. The Qualifying Works are urgent, given the risk of collapse of the access walkway and damage to the gas inlet supply pipe below. Embarking upon a full consultation exercise will 3 months or longer and will substantially delay the Qualifying Works.
12. None of the Respondents have objected to the application or suggested they will be prejudiced if dispensation is granted. Furthermore, none of the Respondents have suggested that any terms should apply to the grant of dispensation.
13. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the leaseholders from seeking a determination of their liability to contribute to the cost of the Qualifying Works, pursuant to section 27A of the 1985 Act.

Name: Tribunal Judge Donegan **Date:** 25 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,

- (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

- (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.

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Our ref: JEF/BR/JP.15.4939

Your ref:

23rd October 2015

Mr J Rodas
The Parkgate-Aspen Group
Wilberforce House
Station Road
London NW4 4DE

Dear Jaime

Re: 101 Shirland Road London W9 2EL

Further to our joint inspection of the property yesterday please note below the following Schedule of Works to be undertaken at the property to make safe.

“Remedial works are required to the access walkway into the property passing over the entrance and vaults to the semi basement flat below.

The walkway is constructed of York stone slabs weathered in asphalt.

The York stone has cracked and fractured resting close by the wall mounted incoming gas main into the premises.

Currently the walk way is Acrow propped to make safe. The works required are that of turning off the gas from the public footpath stop cock removing the existing construction comprising the York stone and asphalt and replacing with insitu concrete on angle supports bolted to the supporting masonry and re-weathering in asphalt together with masonry repairs and redecoration.

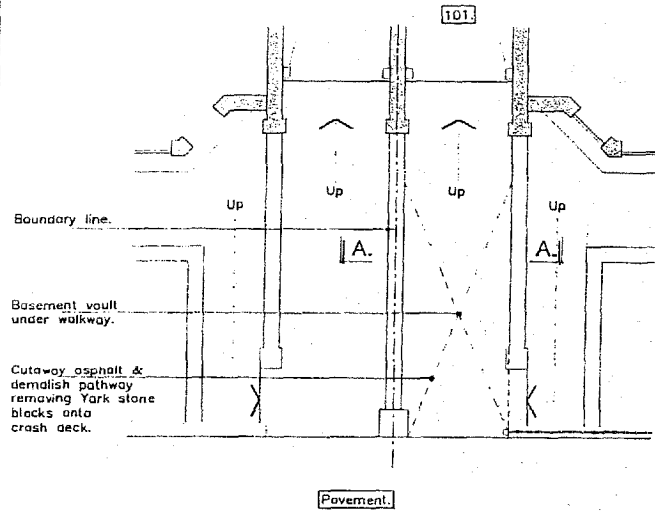
During the course of the works access to the property will have to be undertaken from the adjoining terrace dwelling pathway cutting through the low level up-stand wall separating the pair of houses and accessing onto the raised landing fronting the entrance door.

Works are urgently required so that the gas main can be properly and permanently protected from the failing entrance construction”.

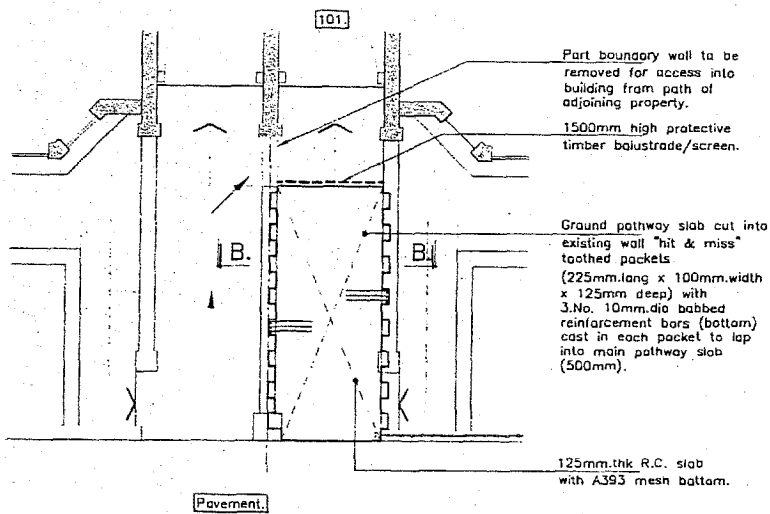
Yours sincerely


John E. Foster
JOHN E FOSTER & PARTNERS

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EXISTING PLAN.



PROPOSED PLAN.

NOTES
 All dimensions and levels to be checked on site by Contractor prior to preparation of shop drawings and commencement of work on site.
 Dimensions must not be scaled from this drawing.
 This drawing is to be read in conjunction with all relevant architects and/or specialist's drawings and documents and any discrepancies or variations are to be notified to the Engineer before the affected work commences.

Concrete grade C35.

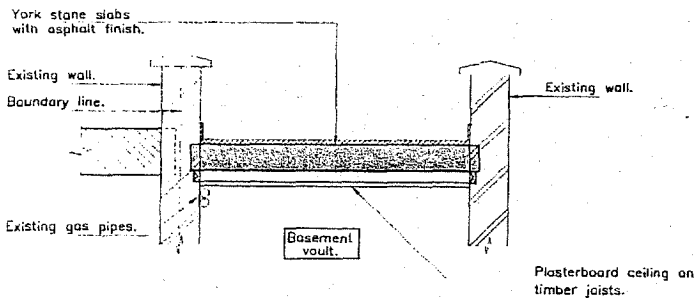
GENERAL NOTES.

All building works must comply with Building regulations/NHBC requirements and Local Authority dictates.

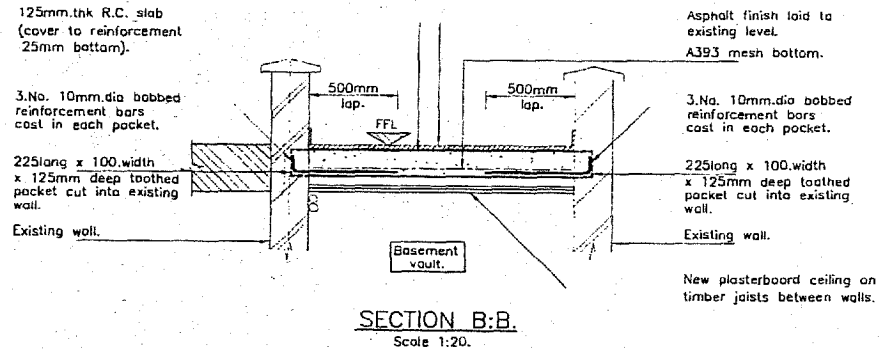
Considerable care should be taken by the contractor to ensure that adequate propping & temporary works support is provided in order to maintain the continued stability of the structure & building.

Considerable care should be taken by the contractor to ensure adequate protection of existing live services as may be found necessary.

FOR COMMENTS/
 APPROVAL.



SECTION A:A.
 Scale 1:20.



SECTION B:B.
 Scale 1:20.

N.B. :
 Before works proceed gas to be switched OFF from stop-cock in public footpath and gas pipes to be protected for their full length.

Rev	Title	Date
Client: JUBILEE SECURITIES LTD.		
Project: 101 SHIRLAND ROAD MAIDA VALE LONDON W9 2EL.		
Drawing: STRUCTURAL DETAILS TO WALKWAY ENTRANCE.		
JOHN E. FOSTER & PARTNERS Consulting Engineers & Surveyors EAGLE CHAMBERS 6/7 ROSEHILL COURT ST. HELIER AVENUE MORDEN, SURREY, SM4 6JT Tel. 020 8646 0941 E.mail: foster.john@icgmucl.com		
SCALE: 1:50 at A2.	DATE: NOV 2015	DRAWN: A.M.
CAD FILE NAME: 4939-01.dwg		
DRG No: JP-15-4939/01		REVISION:

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