



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

Case Reference : **LON/00AG/LDC/2021/0267
P:REMOTE**

Property : **226 Finchley Rd London NW3 6DH**

Applicant : **Freeholders of 226 Finchley Road Ltd**

Representative : **Fursdon Knapper Solicitors
Ms S Spencer
Mr & Mrs Alinia**

Respondents : **Mr K Gurasamy
Barclay Ltd
Ms Maryia Berasneva**

Representative : **Not represented**

Type of Application : **S20ZA Landlord and Tenant Act 1985**

Tribunal Member : **Judge F J Silverman MA LLM
Ms S Coughlin MCIEH**

Date of paper consideration : **09 December 2021**

Date of Decision : **10 December 2021**

DECISION

The Tribunal determines that it will not exercise its discretion to dispense with the consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985 for the reasons set out below.

REASONS

1. By an application made to the Tribunal on 13 October 2021 the Applicant seeks a determination of its application for dispensation from the consultation requirements imposed by s. 20 of the Landlord and Tenant Act 1985.
2. Directions were issued by the Tribunal on 22 October 2021.
3. This matter was determined by a paper consideration P:REMOTE on 09 December 2021 at which the Tribunal considered the Applicant's application and accompanying documents.
4. The Directions issued by the Tribunal had been sent by the Applicant to all Respondents asking them to respond and to indicate whether or not they opposed the application. One objection from Ms S Spencer had been received by the Tribunal but was subsequently withdrawn.
5. The Applicant applied for dispensation from the statutory consultation requirements in order to undertake work to the property comprising installation of a handrail to the front steps of the property and similarly to the side access steps, and a guardrail at the rear of the property together with repairs to tiling on the steps.
6. The lack of a handrail to the front access had been identified by the local authority as a Category 1 hazard in 2017 and they had

subsequently served a hazard awareness notice, because the property is in a conservation area and it was considered that planning permission would be needed for the works and that this may not be forthcoming. The fact that the Applicant had not dealt with this matter in the following four years suggests that the works were not considered to be urgent. There is no suggestion in the Applicant's application that the existing lack of a handrail presents a danger to the occupants. Further, there is no indication from the Applicant that planning permission had been applied for or obtained.

7. The Health and Safety report included by the Applicant in their bundle (page 165 et seq) does not identify the front steps as a hazard of any kind and although it does identify the lack of handrail to the side access and the guard rails as hazards which needed to be addressed, these were not stated to be urgent. These factors confirm to the Tribunal that the works applied for are neither urgent nor required to remedy a dangerous hazard.
8. A first stage consultation is said to have been undertaken although no evidence of it has been supplied to the Tribunal. As stated above, one objection to the application was received from Ms Spencer but was later retracted (pages 227-230) in so far as it related to the actual works.
9. The two estimates for the proposed works supplied to the Tribunal are not identical in the items which they cover and one does not even include a quotation for the side staircase rail. The precise extent of the works to be undertaken is therefore unclear.
10. The Applicant has requested the Tribunal to grant a dispensation from compliance with the full consultation requirements of section 20 in order to allow the sum incurred to be recovered through the service charge.
11. The Tribunal was not asked to inspect the property and in the context of the issues before it and current Coronavirus guidance it did not consider that an inspection of the property would be either necessary or proportionate.
12. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:

“Where an application is made to a [leasehold valuation] 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*” (emphasis added).

13. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable.
14. Having considered the submissions made by the Applicant the Tribunal is not satisfied that they have demonstrated either that the works carried out are urgent or that failure to carry out the works immediately will cause harm or prejudice to or to be suffered by any tenant. The Tribunal therefore declines to exercise its discretion under s20ZA. This means that the Applicant must carry out a full consultation procedure before commencing these works.
15. This determination does not affect the tenants' rights to apply to the Tribunal challenging the payability or reasonableness of the service charges.

Judge F J Silverman as Chairman
Date 10 December 2021

Note:
Appeals

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.