



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

Case reference : **LON/00BK/LDC/2021/0153**

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

Property : **Downfield Close, Amberley Estate,
London W9 2JH**

Applicant : **Westminster City Council**

Representative : **Andrew Pye M.A.(Hons) P.G.Dip
Case Management Officer**

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

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

Tribunal Member : **Judge N Hawkes**

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

Date of paper determination : **1 September 2021**

DECISION

Covid-19 pandemic: 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 bundle of 154 pages (including index). The order made is described below.

Decision 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 the work which forms the subject matter of the Applicant's application dated 10 June 2021.

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 the ventilation system at Downfield Close, Amberley Estate, London W9 2JH ("the Property").

2. The Tribunal has been provided with the following information concerning the Property:

"The Property forms part of the Amberley Estate, and is situated within the western part of Westminster, comprising a purpose-built block of flats, constructed of traditional brick between the years 1960-1970. The Property comprises 79 flats 41 of which are let on long leases. The Property was built as a local authority housing block. The block construction is of brick with balconies resting on a concrete base, and a flat roof, upon which the ventilation ducting is located. The estimated cost of the proposed works is £89,251.55."

3. The application is dated 10 June 2021 and the Respondent lessees are listed in a schedule to the application.

4. Directions of the Tribunal were issued on 1 July 2021. The Directions set out the background to this application as follows:

"The landlord has applied for dispensation from the statutory consultation requirements in respect of additional works to replace main ducting, renewal of Volume Control Dampers, brick piers and two fan units all of which relate to a ventilation system on the property. A S20 Notice was issued in January 2020 in relation to the renewal of the roof surface of the property, following further inspections some of the components of the ventilation system were found to be in a worse condition than expected and now require

replacement. It is preferable that all works are undertaken whilst the contractors are on site and scaffolding is in place.”

5. 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 1 September 2021.
6. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute.

The Applicant's case

7. In the Applicant's Grounds for Seeking Dispensation, the Applicant summarises its case as follows:

“In summary, the Authority seeks dispensation on the grounds that:

- (i) There is a clear requirement to undertake the renewal of the ventilation ducting, associated components and the twin-fan unit which produces the air flow for the system.*
- (ii) The Council became aware of the issues with the ducting, whilst undertaking the renewal of the flat roof to Downfield Close.*
- (iii) In order to renew the roof, the Council was required to move the twin-fan unit, volume control dampers (VCDs) and the duct branches, and then reinstate.*
- (iv) On inspection of the ducting and the twin-fan unit, the condition of these elements was found to be worse than expected.*
- (v) A full survey and report of the ventilation system was commissioned, which confirmed the need for replacement of the ducting and fan unit. The report of February 2021 is listed at item B4 - pages 18-36 in the bundle.*
- (vi) For reasons of efficiency and reduction in the overall cost, the Council believes the optimum course of action was to undertake the ventilation works, whilst on site and undertaking the roof replacement, with scaffolding and facilities in situ.*
- (vii) If dispensation was granted, the Authority believes no relevant prejudice would be suffered by the concerned leaseholders.”*

8. The Applicant also states at paragraphs 10 to 19 of the Grounds for Seeking Dispensation:

“10. The primary basis for the request for dispensation is that the most economical way to undertake the works to the ventilation system noted above, was whilst the Term Contractor was already on site, renewing the flat roof surface. To undertake the necessary works at a later date, would induce delay and also lead to increased costs if the ventilation works, occurred as a separate project with a new Section 20 Notice.

11. The Ventilation Test report was issued on 25th February 2021 by ADT Energy, based on an inspection and testing of the existing ventilation system. The Test report is attached as Item B4 -pages 18-36 in the bundle. The report highlighted the age, and overall poor condition of the existing ducting and twin-fan system. The report clearly identified the need for replacement of key components including the Volume Control Dampers (VCDs), many of which were not operating correctly or efficiently.

12. A financial analysis was undertaken to determine the additional costs to the existing project, involving the renewal of the flat roof, at Downfield Close. Further cost projections were also created for undertaking the ventilation system works, as a stand-alone project, with the issue of a new Section 20 Notice. On completion of the analysis, the optimum approach was agreed to undertake the works whilst Axis, the Term Contractor was in situ. The site costs and scaffold costs were already included within the costs of the roof renewal project. A copy of the Section 20 Notice for the original roof replacement works is attached as Item B6 -pages 43-128.

13. A letter was issued to all residents advising of the need for additional ventilation works on 2nd June 2021. A copy of this letter is attached as Item B1- pages 13-14 . No specific queries were raised in relation to the letter. A further letter was issued to the 41 leaseholders of Downfield Close on 8th June 2021. This letter confirmed the need for the additional works, and explained that the Authority intended to apply to the First Tier Tribunal, requesting Dispensation from the Section 20 requirements, for reasons of urgency and economy, in undertaking the ventilation works. A copy of this letter is attached as Item B2 – pages 15 – 16 in the bundle.

14. The Authority received one response by email and none by telephone. A copy of the email trail between Mr Pye and the lessee is attached as Item C1 -pages 130-136. One query was from the leaseholder of Flat 20. The query concerned the additional cost of the works, and how the leaseholder would be charged & invoiced for the additional costs, to the existing estimated charges for the roof renewal works, under Project Z121.

15. The Authority received the Directions from the Tribunal issued on 1st July 2021. The letters were issued to lessees containing copies of the application and the financial rationale to do the works, as well as the Directions themselves. The letters were posted on 8th July 2021.

16. One response was received to the letters issued under the Case Directions as above. This query was from the Managing Agent of Flat 22, on behalf of the lessee. This was a general question, around why the letter was being sent, and what the reason was to undertake the additional works. A reply to this email was issued and a copy can be found in Item C1 -pages 130-136 in the bundle. The Managing Agent confirmed the lessee was happy for the works to proceed.

17. *The timescales of the project were impacted by the need to a) design and manufacture the new alloyed metal ducting, b) Produce the technical specification for the twin-fan system, c) install and test the new elements and components of the system. The new ducting was installed during June 2021, however the twin fan system has yet to be installed. The specification has been agreed, although The Authority is questioning the overall cost of the fan manufacture and installation, with its contractor, Axis Europe. This has resulted in some delay, as the final cost of the fan has not been agreed, and hence the instruction for installation, has not yet been issued. The Authority considers ensuring Value for Money (VFM), is a key responsibility. The instruction is expected to be issued by 20th August 2021. The estimated cost of the new twin-fan system and installation is £24,249, which is within the original financial budget and rationale for the additional works to the ventilation system (see Financial Rationale Document at Item B7 – page 129 in the Bundle). Once instructed, the installation of the new twin-fan and associated electrical works will take thirty-five days and due to be completed by Friday 1st October 2021.*

19. *In light of the requirement for the additional ventilation works, the Authority wishes to seek dispensation from the consultation requirements from this Honourable Tribunal. The Authority notes that there have been no objections and three responses in total received from the leaseholders, which have been answered fully. The financial rationale attached to the application, illustrates the most economical and efficient method was adopted, to undertake the necessary additional works.”*

9. At paragraph 5 of the Applicant’s Grounds for Seeking Dispensation, the Applicant records that:

“The date for filing statements in response or objections expired on 26th July 2021. The leaseholder of Flat 56 Downfield Close telephoned the Council on 3rd August 2021 and advised he only received a copy of the letter on 3rd August 2021. Mr Pye contacted the Tribunal via email on 4th August 2021 and advised of the leaseholder’s contact and the point. The Tribunal advised by return email on the same day, that the leaseholder could still register his objections to the Applicant and the Tribunal. Mr Pye subsequently telephoned the leaseholder on the 4th & 5th of August, and left two voicemail messages, advising that the lessee could still object as in the Directions. No further contact has since been received from the lessee, by the Applicant.”

The Respondents’ case

10. None of the Respondents have filed a reply form and/or representations to the Tribunal opposing the Applicant’s application.

The Tribunal's determination

11. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.
12. 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.
13. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
14. 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.**
15. In all the circumstances and having considered the contents of the determination bundle including:
 - a. the Applicant's Grounds for Seeking Dispensation;
 - b. the evidence filed in support of the application; and
 - c. the lack of any opposition and/or challenge to the Applicant's account on the part of the Respondents

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 the work which forms the subject matter of the Applicant's application dated 10 June 2021.

16. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge N Hawkes

Date: 1 September 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).