



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

**Case reference** : LON/00AU/LDC/2015/0068

**Property** : 423 Hornsey Road, London, N19  
4DX

**Applicant** : Sabz Sefid Sorkh Limited (“the  
Landlord”)

**Representative** : Salter Rex LLP (Managing Agent)

**Respondent** : (1) Imran Khatri  
(2) Lysa Gn Kelly  
(3) L. S. Manget  
(4) Mr M H Abedizadeh  
(5) Ganeswaran Velautham  
(6) Mr M H Abedinzadeh  
 (“the Tenants”)

**Representative** : N/A

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

**Tribunal member** : (1) Mr A Vance, Tribunal Judge  
(2) Mr N Martindale, FRICS

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

**Date of Hearing** : 15 July 2015

**Date of Decision** : 15 July 2015

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**DECISION**

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## **Background**

1. The applicant seeks dispensation from all of the consultation requirements imposed on the landlord by section 20 of the Landlord and Tenant Act 1985 (“the **1985 Act**”) in respect of proposed works at 423 Hornsey Road, London, N19 4DX (“the **Property**”).
2. The Tribunal has been informed that the Property is a Victorian three-storey building converted into five flats.
3. The Landlord’s position is that by letter dated 23 July 2013 it wrote to the Tenants notifying them of its intention to carry out external repairs and redecorations to the Property (“the Major Works”). Its position is that this was an initial notice served in accordance with the statutory consultation provisions of s.20 of the 1985 Act. This was then followed by a letter dated 9 January 2014 enclosing a report on tenders for the proposed work and inviting observations from the Tenants. The Landlord’s position is that this letter comprised stage two of the s.20 consultation process.
4. It appears that the Major Works commenced on or about 15 September 2014. Following commencement of the works Conisbee, a firm of structural engineers appointed by the Landlord, prepared a report dated 7 November 2014 in which they indicated that a flank wall of the Property was in a poor condition and that it was recommended that the Landlord install “Helifix Bow Ties HD” into the side of the joists to avoid the likelihood of the wall collapsing.
5. In a letter dated 8 January 2015 to the Tenants, the Landlords building surveyor, Mr Nadir Hashim, stated that after rendering to the subject wall had been removed the true extent of the damage to the wall had been revealed. It was, he said, in a worse condition than initially envisaged and it needed to be rebuilt. Conisbee then produced a further report dated 7 July 2015 in which it was stated that the wall “*can be considered to be potentially imminently dangerous*” and that a full wall rebuild was proposed.

6. The Applicant lodged its application for dispensation from the consultation requirements imposed on the landlord by section 20 of the 1985 Act with this Tribunal on 8 June 2015 and on 16 June 2015 the Tribunal issued directions (the “**16 June 2015 directions**”). These directions provided for the application to be determined on the papers in the week commencing 13 July 2015 unless a party requested a hearing by 10 July 2015 in which case a hearing would be held on 15 July 2015. The directions also required the Applicant to send a copy of the Tribunal’s directions to each of the Tenants by 22 June 2015 and for the Respondents to indicate whether or not they consented to the application by 29 June 2015. The Applicant was also directed to prepare a bundle of documents to be sent to the Tribunal and to any Respondent who indicates that they opposed the application by 2 July 2015.
7. One Tenant, Mt Khati, notified the Tribunal that he opposed the application and another, Ms Kelly provided only qualified approval. These Tenants are referred to below as “**the objecting Respondents**”.
8. The Applicant did not provide a bundle by 2 July 2015 and did not request an extension of time to do so. On 10 July 2015 the Tribunal made further directions (“**the 10 July directions**”) issued to the parties on 13 July 2015 stating that the matter was now to be determined at an oral hearing on 15 July 2015 with a time estimate of one hour and that unless by noon on 14 July 2015 the Respondent (*sic*) hand delivered to the Tribunal and any Respondent who opposed the application a document bundle that complied with the 16 June 2015 directions that the whole of these proceedings may be struck out pursuant to rule 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the 2013 Rules**”). The reference to the Respondent delivering the bundle (as opposed to the Applicant) was a clear typographical error.
9. The tribunal received a document bundle from the Applicant on 14 July 2015 and the matter proceeded to an oral hearing on 15 July 2015.

## The Hearing

10. The hearing was attended by Mr Lambertucci, property manager at the Landlord's managing agents, Salter Rex and by Ms Lysa Kelly of Flat B and Mr Imran Khati of Flat A.
11. At the start of the hearing the Tribunal asked Mr Lambertucci if the Landlord had complied with the 10 July directions and sent a copy of the bundle of documents to the two Respondents in attendance at the hearing. He confirmed that he had not and when questioned as to why he had not done so he conceded that, in his words, there was "*no valid justification*" for that non-compliance. As to the Landlord's initial failure to provide the bundle to the Tribunal and the objecting Respondents by 2 July 2015 this was, he said, due to his personal ill health.
12. The Tribunal indicated to the parties that the failure by the Applicant to comply with the Tribunal's directions was, in its view a potentially serious one which may justify striking out the whole of the applicants case given that the objecting Respondents had not received the Applicant's bundle and had not seen either of the two Conisbee reports until the start of the hearing. As such it appeared that they may be substantially prejudiced in responding to the Applicant's case.
13. The Tribunal arranged for both Mr Khati and Ms Kelly to be provided with a copy of the Applicant's bundle and adjourned the hearing for approximately 30 minutes to allow them to consider the documents in the bundle. On resumption of the hearing both Ms Kelly and Mr Khati stated that they felt that they had insufficient time to properly consider the documents in the bundle.
14. Mr Khati strongly opposed the application on the basis that the Landlord had failed to explain why it had delayed in making this application until June 2015 when on its own case it was aware that the wall required rebuilding in October 2014. In his view the delay indicated that the work proposed was not required as a matter of urgency.

15. Ms Kelly stated that she was prepared to agree to the application but only if the Landlord was prepared to agree to it being made on terms that the Landlord provided certain information including the costs of the works and likely commencement date and duration.
16. The Tribunal then invited representations from the parties as to why this application should not be struck out. Mr Lambertucci's position was that the evidence indicated that the wall was in imminent danger of collapse and that if this happened not only was it a health and safety risk but it would also involve financial loss to both the Landlord and the Tenants. Mr Khati repeated his comments regarding unnecessary delay and Ms Kelly said that she was willing for the application to proceed but only if dispensation was granted on appropriate terms.

### **Decision and Reasons**

17. The Tribunal considers it appropriate to strike out the whole of the application under rule 9(3)(a) of the 2013 Rules. In its view the Applicant has failed, without good reason, to comply with both the 16 June directions and 10 July directions. The 10 July directions indicated that non-compliance may lead to the striking out of the application and Mr Lambertucci has conceded that there was no valid justification for the failure to provide a copy of the hearing bundle to the objecting Respondents.
18. In the Tribunal's view this non-compliance is sufficiently severe to justify striking out the claim. The objecting Respondents had not seen key documents such as the two Conisbee reports until the morning of the hearing and both indicated that the time available to consider the documents, once provided, was insufficient to enable them to give full consideration to the application.
19. The bundle should have been provided to them by 2 July 2015 so as to enable them to comply with the Tribunal's direction to provide any written representations in response to the application by 10 July 2015. The

Applicant's failure to do so has meant that they were unable to provide any written representations in response in advance of the hearing date.

20. The hearing was listed for an hour and it was not possible for the Tribunal to allow more time for the objecting Respondents to consider the documents. In light of the substantial prejudice caused to the objecting Respondents; the serious non-compliance with the Tribunal's directions and the Tribunal's limited resources, it is considered appropriate to strike out the whole of the application as opposed to adjourning it.

### **Reinstatement**

21. It is open to the Applicant to apply for reinstatement of this application under rule 9(5) of the 2013 Rules. Any such application must be made in writing and must be received by the Tribunal within 28 days after the date on which the Tribunal sends notification of this decision.

22. This Tribunal recommends that any application for reinstatement should be accompanied by:

- (a) a bundle complying with paragraph 10 of the 16 June 2015 directions. This must be page-numbered sent to the objecting Respondents at the same time that it is sent to the Tribunal; and
- (b) a witness statement which should also be sent to the objecting Respondents at the same time that it is sent to the Tribunal which should:
  - (i) Address each of the bullet points at paragraph 10 of the 16 June 2015 directions;
  - (ii) Exhibit a full specification of works to be carried out (if available) together with details of the anticipated cost of the proposed works and anticipated commencement and completion dates of the works; and

(iii) Identify which of the flats in the Building need to be vacated whilst the works are carried out and how long this is likely to be for.

23. If the Tribunal accedes to the reinstatement request it will issue further directions. It may consider it is appropriate for the application to proceed to be dealt with at an expedited paper hearing (unless a party requests an oral hearing) and will want to issue directions allowing any objecting Respondents to respond to the reinstated application.

**Application under s.20C**

24. At the end of the hearing, the objecting Respondents applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determination to strike out this application, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Amran Vance

**Date:** 15 July 2015