



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

**Case reference** : **LON/00BE/LDC/2019/0195**

**Property** : **38 Amott Road, London SE15 4JD**

**Applicant** : **Midway Modernisations Limited**

**Representative** :

**Respondents** : **Mr DJ McNay (flat a)  
Misses L & J Morris (flat b)**

**Type of application** : **Under section 20ZA of the  
Landlord and Tenant Act 1985 ('the  
Act') for dispensation from the  
consultation requirements in  
respect of qualifying works**

**Tribunal member** : **(1) Judge Daniela Brandler  
(2) Mr M Mathews, FRICS**

**Date and venue of  
hearing** : **2 December 2019  
Alfred Place, London**

**Date of decision** : **2 December 2019**

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**DECISION**

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## **Decision**

1. The tribunal grants the applicant dispensation from the statutory consultation requirements contained in section 20 of the Act in respect of works required to be carried out to 38 Amott Road, Peckham, London SE15 4JD. Scaffolding has been erected to secure the stonework. The remainder of the works are, as far as the Tribunal is aware, yet to be carried out. The quotation relied upon by the Applicant was in the sum of £7656.00 plus VAT.

## **Reasons for the Tribunal's determination**

### **Introduction**

2. On 1 November 2019 Midway Modernisations Limited ('the Applicant') applied to the Tribunal ('the Application') for an order under section 20ZA of the Act dispensing with the consultation requirements contained in section 20 of the Act and associated regulations in respect of 38 Amott Road, Peckham, London SE15 4JD ('the Property'). The Respondents are the leaseholders of flats 38a and 38b at the Property.

3. Section 20ZA (1) of the Act provides as follows:

*'(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 do so.'*

4. The works the subject of the Application involve the re-setting of very heavy stonework fixed to the building above the communal front door porch. This stonework has moved from its fixing and may fall and potentially cause personal injury to the tenants, occupiers and visitors to the Property. The tenant of flat (a) states that the stonework is moving "on a daily basis". Specialist contractors have advised "please note that we feel that the front façade is in a dangerous condition and may fall at any time".
5. Contemplor & Stone, Chartered Surveyors have produced a report dated 16 July 2019 setting out the urgency of repairs.
6. Chris Kendall Associates, Consulting Engineers, have produced a report dated 20 November 2019 also setting out the urgency of repairs.
7. The Applicant states that the reason for the urgency are for the reasons set out above
8. The Applicant requested a paper track (i.e. on the basis of written submissions of the parties).

9. Directions in respect of this application were made by the tribunal on 14 November 2019. These were sent by the Tribunal to the leaseholders who were given an opportunity to oppose the application. Should any of those leaseholders oppose the application, they were by 22 November 2019 to complete and return the reply form, and send to the landlord a statement in response to the application.
10. No objection has been received from either of the leaseholders.

### **The relevant lease provisions**

11. The Tribunal was provided with a copy of the lease for the ground floor flat at 38 Amott Road, Peckham London SE15. It is assumed that the remaining lease is similar in all material respects. The Lease is dated 13 August 1992 and is made between Midway Modernisations Limited (Landlord) and Julie Ann Bloomfield. Also provided is a Deed of Variation relating to the same property between Midway Modernisations Limited (Landlord) and David John McNay for a term of 189 years from 24 June 1992. In consideration of a premium and the payment of a service charge, the lease grants the Property to the Tenant.
12. Paragraph 5 of the Lease sets out the Landlord's Covenants.
  - (5)(a). "To maintain and keep in good and substantial repair and condition:-
    - (i) the main structure of the Building including the principal internal timbers and joints and walls floors and ceiling and the exterior walls and the foundations and the roof thereof ....
    - (ii) ..
    - (iii) the Common Parts;
    - (iv) all other parts of the Building not included in the foregoing sub paragraphs (i) to (iii)..."
13. The Tenant covenants to pay the service charge according to the provisions of the Fifth Schedule of the Lease.
14. The mechanism for the payment of the service charge is found in paragraph 2 of the Fifth Schedule

### **The Applicant's submissions**

15. The works set out in the Applicant are urgent. This is confirmed by the report of Chris Kendall Associates, Consulting Engineers dated 20 November 2019 and the report of Contemplor & Stone, Chartered Surveyors dated 16 July 2019.

16. Two estimates for the works were obtained. The lower one was the quotation from South East Ties Ltd dated 17 October 2019 in the sum of £7656.00 plus VAT.
17. Additional urgent works may become apparent during the course of the works. There are no details currently of what these might be.
18. No objections to this application have been received from any leaseholder.

### **The Tribunal's Determination**

19. The Tribunal was provided with convincing evidence that the works are urgent for the safety of the residents in the property. This evidence is in the reports referred to above.
20. The Tribunal expects the Applicant to provide the Leaseholders with regular progress reports.
21. It is not the concern of the Tribunal, in any case, as to whether the cost was reasonably incurred. The Respondents retain the right to challenge the cost by making an application under section 27A of the Act at a later date. The question before the Tribunal is whether it is reasonable, in the circumstances of the case to dispense with the consultation requirements. The Tribunal therefore determines that it is just and equitable that dispensation is granted from the consultation requirements contained in section 20 of the Act and the associated regulations requested by the Application.
22. 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.
23. 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.
24. 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 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.
25. 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.

**Daniela Brandler**

**2 December 2019**

**APPENDIX 1**  
**RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

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**APPENDIX 2**  
**RELEVANT LEGISLATION**

**Landlord and Tenant Act 1985**

20ZA. Consultation requirements: supplementary

- (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.

**Service Charges (Consultation Requirements) (England) Regulations 2003.**

**Part 2 - consultation requirements for qualifying works for which public notice is not required**

*Notice of intention*

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
  - (c) invite the making, in writing, of observations in relation to the proposed works; and
  - (d) specify—

- (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period;  
and
  - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

*Inspection of description of proposed works*

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
  - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to proposed works*

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Estimates and response to observations*

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a



recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
  - (a) from the person who received the most nominations; or
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
  - (c) in any other case, from any nominated person.
  
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
  - (a) from at least one person nominated by a tenant; and
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
  
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
  - (a) obtain estimates for the carrying out of the proposed works;
  - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

*Duty on entering into contract*

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
  - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.