FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/LDC/2020/0075P**
Property	**:**	**400, 402, 404 Uxbridge Road & 1a, 1b and 1c, Oaklands Grove, London, W12 0JD**
Applicant	**:**	**Everidge Limited**
Representative	**:**	**Safe Property Management**
Respondents	**:**	**Ms Tania Kilner (1)** **Nextbridge Capital Limited (2)**
Representative	**:**	**The First Respondent in person (written representations). The Second Respondent did not respond to the application.**
Type of Application	**:**	**Dispensation from consultation requirements under section 20ZA Landlord and Tenant Act 1985 ("the Act")**
Tribunal Member	**:**	**Mr Charles Norman FRICS** **Valuer Chairman**
Date of Decision	**:**	**1 October 2020**

DECISION

Decision

1. The decision of the Tribunal is that the application for dispensation from the consultation requirements be **GRANTED** in respect of:

    i. Items 1, 2 3 and 4 (concerning emergency repairs) on the quotation dated 3 April 2020 from EMS Construction Limited **but only to extent now carried out**. These items are:

        a. Preliminaries
        b. Temporary Propping
        c. Surface protection
        d. Stripping out suspended ceiling

    ii. The cost of opening up and investigative works (as shown on the "Summary of Costs" schedule on page 102 of the bundle) **but only to extent now carried out**. These are:

        a. Investigation Costs - Berrys
        b. Opening up Works - EMS Ltd

2. The Tribunal does not consider that professional fees are within the scope of the consultation requirements but should that prove incorrect **GRANTS** dispensation in respect of structural engineer, building surveyor /principal designer fees and building control fee.

3. Dispensation in respect of all other matters is **REFUSED**.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of section 27A of the Act. A party retains the right to apply to the Tribunal for a determination of the reasonableness and payability of costs incurred or to be incurred.

Reasons

Background

4. This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was PAPERREMOTE. A face to face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 103 pages the contents of which the Tribunal has noted. The Decision made is set out at Paragraphs 1, 2 and 3 above.

5. Application to the Tribunal was made on 9 April 2020 for a dispensation from the consultation requirements under section 20ZA of the Landlord and

Tenant Act 1985 ("the Act") (set out in the appendix). From the bundle, the total revised costs will exceed £52,500.

Directions

6. Directions were issued on 7 July 2020. The directions ordered that the matter be dealt with by written representations unless any party made a request for an oral hearing, which none did. The directions required the Applicant to give notice of the application to all lessees. In addition, the Respondents were invited to respond to the application. The Tribunal stated that it would not inspect the property but rely on plans and photographs provided by the parties.

The Property

7. The property is described in paragraph 10 below. The First Respondent has stated that planning permission has been granted for 2 additional storeys to be added to the building. These are to provide a studio flat at second floor, a 2 bedroom maisonette over second and third floors, a 3 bedroom maisonette over second and third floors and two terraces.

The Respondents' leases

8. A copy of the lease of Flat 1c was supplied, dated 21 August 1998 by which a term of 125 years was granted by the Applicant. Clause 4(4) obliges the tenant to pay a reasonable proportion of the lessor's costs of keeping in good and substantial repair and decoration the common parts of the building including roof and foundations.

The Applicants' Case

9. The basis of the application was expressed as follows*: "the building is currently considered as a dangerous structure and need[s] to be rectified as soon as possible. We have already installed temporary support; however, the permanent fix is necessary. We attach a report from structural engineer and summary of costs involved."* The qualifying works were described as *"installation of support to walls and floors by addition of steel beams, new columns and foundations."*

10. The applicant relied upon a short report dated 14 January 2020 from David Smith Associates ("DSA"), consulting structural and civil engineers, who inspected the property on 6 January 2020. The report was described as a "brief visual structural inspection". The report stated, "*we have not inspected all parts of the structure that are covered, unexposed or inaccessible"*. The landlord's engineers described the property as "*a semi-detached corner property fronting …Uxbridge Road and Oaklands Grove… constructed mid to late 19th century…. the property was assumed to be of load-bearing masonry walls supporting timber floors and cut timber roof… [subsequently], the property was converted into a number of units and joined to an adjacent property to form a semi-detached structure. The front*

elevations have been extended outwards to create a shop style frontage and the 1st floor converted into flats. […] the extended ground floor has been converted into…smaller commercial units. […] *during renovation works in the 1960s, the ground floor walls were removed and the first floor walls supported with a series of steel beams spanning onto steel columns […]. However to the west of the site along the Uxbridge Road elevation it was confirmed that wall has been supported from two timber beams gained support from two timber beams. [….] the first floor wall and chimney breast above the shop did not have any structural support. Detailed investigations showed that the wall was supported only from first floor floor joists [which] …had no form of structural support… cracks appeared to the walls in question and the floor structure dropped significantly over the shop.* ***The unsupported wall and wall supported from a timber beam was extremely unsafe and would be classed as a dangerous structure. At any point the first floor structure in this area could collapse. The [relevant] walls …should be propped immediately to ensure that collapse does not occur.*** *Following… propping, we would recommend that the walls and floors in question should be adequately supported by steel beams new columns and foundations.* ***If these works could not be undertaken immediately we would recommend the building is evacuated and building control notified of the dangerous structure.*** (emphasis added)

11. On 19 June 2020, the landlords served a service charge demand for £7,129.13 against the First Respondent which reflected initial costs of £67,319.43. On 3 August 2020 the landlords' agent sent an email (it is presumed to all lessees the recipient addresses not being shown) stating that following a survey by the Respondents preferred structural engineers, the owners of units 400A and 400B will bear the cost of structural steelwork at a cost of £12,300 plus VAT as per a quote from EMS Construction Limited, the landlords builders. Subsequently, on 10 August 2020, revised service charge demands were served reflecting reduced total costs of £52,559.43. A revised section S20ZA schedule of costs was included in the bundle.

The First Respondent's Case

12. A reply to the standard questionnaire was received from Ms Kilner who was strongly opposed to the application. Ms Kilner's case may be summarised as follows.

13. Firstly, the works were not urgent because the landlords had allowed five months to elapse between the DSA inspection and the demand for immediate payment in respect of the work. The First Respondent then raised questions including: why the works were not covered by building insurance, request for quotations, whether the contractor was connected to the freeholder, the relationship between the specification and additional storeys to be added to the building. The basis of £9,000 said to have been spent to date in relation to the matter was questioned. In addition, as of 6 July 2020, the temporary supports recommended by DSA had not been installed.

14. Secondly the First Respondent complained that the freeholder and managing agent has not answered her questions and appended email correspondence to support that contention.

15. Thirdly, Ms Kilner relied on an experts' report from Mr Charles Davenport CEng MICE of KTA Structures ("KTA"). This report was addressed to a Mrs Kelly de Lautour and dated 6 July 2020. The KTA report disagreed with various factual findings of the DSA report. KTA identified 2 steel beams under the first floor chimney breast and therefore found that wall safe. The beam under the front elevation was a flinch beam [a reinforced timber beam] which was not mentioned by DSA. As a result of this, this together with the lack of cracking in the front elevation, KTA advised that the front elevation was not dangerous. However, KTA recommended that the flinch beam be replaced with a steel beam. KTA advised that the DSA remedial specification was excessive and in part unnecessary.

16. Email correspondence was included in the bundle between the parties' respective engineers. On 13 August 2020 Mr Davenport of KTA wrote to Mr Garrod of DSA stating *"Following our phone conversation a couple of weeks ago will you be revising your report on the property? As you have seen our report, you will now be aware of the steel beam below the 1st floor wall. The only section of wall which is partially unsupported is the inside face of the short section of stepped in 1st floor wall adjacent to the lefts (sic) side party wall. This should be relatively simply rectified with the addition of a new timber joist underneath it."*

17. On 14 August 2020, Mr Garrod of DSA replied stating *"We have not been asked to update the report by our Client. I confirmed that we were satisfied with your report and have not heard anything else."*

18. Ms Kilner also submitted an alternative quotation from Danube Construction Services which was said to meet the KTA requirements and which was £6,000 plus VAT.

The Law

19. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

20. The Tribunal finds, for the purpose of a section 20 consultation, that the landlord is normally entitled to act in accordance with its professional advice unless or until that advice is withdrawn or shown to be wrong. This is particularly the case in relation to matters affecting safety.

21. Therefore, the Tribunal finds that it is reasonable to grant the landlord dispensation from consultation requirements in respect of the emergency elements of the DSA advice of 20 January 2020, but only to the extent that the works have been carried out. This is because it would have been impracticable to comply with the consultation requirements in respect of those matters. The Tribunal has identified the relevant matters at Paragraph 1 above.

22. The meaning of "works" in section 20 is not defined. In *Paddington Walk Management Limited v Peabody Trust* [2010 L&TR 6], HHJ Marshall QC sitting in the County Court held that "Works on a building comprise matters that one would naturally regard as being building works." That definition would exclude professional fees. However, decisions of the County Court are non-binding on the Tribunal and the Tribunal has not received submissions on this point. Therefore, should that be found to be wrong the Tribunal grants dispensation in relation to professional fees directly related to the emergency works namely structural engineer and building surveyor /principal designer fees and any building control fee. The Tribunal finds that management fees, legal costs and party wall surveyors' fees are outside the scope of section 20 of the Act and do not require dispensation.

23. By 14 August 2020 at the latest, DSA resiled from its earlier advice, accepting the findings of KTA. This undermined the whole basis of the specification of works against which the landlord is required to consult and to obtain competitive quotes. In addition, the landlord has, in effect, conceded that a large portion of that specification namely the steelwork in 400A and 400B (£14,760) is outside the scope of the service charge provisions. Furthermore, the cost of the remaining subject works is very significant, exceeding £52,500. No alternative quotations have been provided by the landlord.

24. The Tribunal finds that each and all these factors would cause significant prejudice to the First Respondent which cannot adequately be addressed by imposing conditional dispensation. Therefore, with the exception of the emergency works and fees as set out at Paragraph 1 above, the application must be refused.

Charles Norman FRICS
Valuer Chairman

1 October 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Wherever possible, any such application should be made by email to London.Rap@justice.gov.uk, giving the case reference in the email heading.

- 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(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.

(2)In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a)if it is an agreement of a description prescribed by the regulations, or

(b)in any circumstances so prescribed.

(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b)to obtain estimates for proposed works or agreements,

(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.