



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

Case reference : **LON/00AN/LDC/2022/0146**

HMCTS code : **P: PAPER REMOTE**

Property : **Flats 1-4, 19 Ethelden Road, London,
W12 7BG**

Applicant : **Lacemode Limited**

Representative : **Willmotts (managing agents)**

Respondents : **Sam Grade – Flat 1
Jeanne Bester – Flat 2
Kevin Thompson – Flat 3
Anna Johnson-Hill- Flat 4**

Type of application : **Dispensation with Consultation
Requirements under section 20ZA
Landlord and Tenant Act 1985**

Tribunal members : **Judge Robert Latham
Mark Taylor MRICS**

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

Date of decision : **14 October 2022**

DECISION

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of the repairs to abate leaks to the communal drain.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The applicant has filed a bundle in support of the application of 92 pages.

The Application

1. By an application received on 21 July 2022, the Applicant seeks dispensation from the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”). On 8 August, the Tribunal sent a copy of the application to the Respondents.
2. Nos. 17 and 19 Ethelden Road comprise two terrace houses converted in 1988 to form five self-contained flats. There are two ground floor flats with garden, two first floor flats and a second floor flat which extends over both roofs. The ground floor flat at No. 17 (known No.17) is retained by the freeholder, and is therefore not named as a respondent to this application. The remaining four flats are all numbered Flats 1 – 4 at 19 Ethelden Road.
3. The background to this application is that the leaseholder of Flat 1 reported that their basement had recently begun to repeatedly flood and no matter how often they drained and cleaned, it duly refilled within hours. It was reported as a serious and urgent health issue, as the property had become a breeding ground for vermin, plus maggots and flies. Investigations were undertaken and a leak detection company, Aspect Maintenance Services Ltd ("Aspest"), was instructed by Flat 1 to try and locate the source. This involved some extensive investigations, and they discovered a significant leak on the communal drain passing underneath Flat 1. The communal pipe had split, and the wastewater contributed to a pest issue within the flat. The trace and access works instructed by Flat 1 amounted to £1,943.16 including VAT consisting of three invoices for the sums of £1,089.96, 570.00 and £283.2. An emergency repair was undertaken by Aspect and the costs of the repair works came to £8,018.33 including VAT. Due to the severity of the leak, there was not sufficient time to obtain a second quotation. The repair works were instructed, and the description of the works was:

‘To attend site and carry out specialist cipp liner installation from access point downstream to manhole inside property to cover severely defective pipe beneath kitchen which is leaking in cellar. We need to break out section of manhole wall to gain direct access onto 100mm pipe to fully clear and inspect prior to

lining. Access point will need to be removed and replaced once liner installed. This will require 3 X engineers on site.’

4. The landlord has filed an insurance claim for the drain works. The extent to which these costs may be recoverable, remains unclear.
5. Whilst the drain works were being undertaken, Aspect noted another defect on the drains and located an old back gulley serving all four flats which was constantly blocking causing drainage issues. The recommendation is for this to be repaired. The quote supplied is for the sum of £6,042.60 including VAT and the works include: (i) apply protective sheeting to the work area; (ii) kango around manhole to expose original back gulley which is now under the screed and taking 4 kitchen wastes and consistently blocking; (iii) bypass trap and reinstate pipework; (iv) back fill and re screed as required; (v) test installation; and (vi) leave site clean and clear. It seems that these additional works have not been completed and remain outstanding.
6. On 17 August 2022, the Tribunal issued Directions which were sent to the parties on the same day. The Tribunal stated that it would determine the application on the papers, unless any party requested an oral hearing. No party has done so.
7. By 13 September 2022, any leaseholder (or sub-lessee) who opposed the application was directed to complete a Reply Form which was attached to the Directions and email it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the applicant a statement in response to the application. No leaseholder has returned a completed Reply Form opposing the application.
8. The Applicant has emailed the tribunal a bundle of documents in support of their application. The bundle includes a copy of the lease for Flat 1, 19 Ethelden Road.
9. Section 20ZA (1) of the Act provides:

“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.”
10. **The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

11. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. The Tribunal accepts that there was an urgent need to carry out the initial phase of the works.
12. It seems that the second phase of the works, namely the need to fill the old back gulley, has not yet been completed. The Bundle includes an email, dated 13 September (at p.60), from which it is apparent that the Respondents queried why a second estimate had not been sought. This defect had been noted when Aspect was carrying out the phase one drain repair. Unfortunately, it seems that there is no CCTV footage or plans to provide to a second contractor for them to quote for the works. The Applicant has suggested that the cost of instructing a second contractor to carry out a further CCTV survey which would be necessary before a second quote could be obtained, may not be proportionate. Against this background, it is important that the Applicant secures best value. However, this is not a matter that this Tribunal is required to determine on this application. We are satisfied that dispensation from the statutory consultation requirements should be granted so that these further works can be executed at the earliest opportunity. To require the landlord to follow the statutory consultation process, would cause unnecessary delay.
13. The Tribunal will send a copy of this decision to the Applicant and the four Respondents.

Judge Robert Latham
14 October 2022

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 **by e-mail** 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).