



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

Case Reference : **LON/00AG/LDC/2019/0120**

Property : **Saffron Heights, 28 Saffron Hill,
London EC1N 8FA**

Applicant : **Barry Sheridan & Gavin Muclcahy
(head lessor of the internal
residential parts of Saffron
Heights)**

Representative : **Property Partners Management Ltd**

Respondent : **The various Leaseholders of
Saffron Heights.**

Representative : **Unrepresented**

Type of Application : **To dispense with the requirement
to consult lessees about major
works**

Tribunal Members : **Judge Hargreaves
Duncan Jagger MRICS**

**Date and venue of
Paper Determination** : **21 October 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 October 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the installation of
 - (1) The installation of fire alarms, and sounders, to be linked with the commercial elements of the building (completed on 26 July 2019)
 - (2) Repair/replacement to smoke vents to be linked with the fire alarm panel (completed on 26 July 2019)
 - (3) Temporary placement of “walking watch” officers (in place from 19 July 2019)
 - (4) Further sounders to be installed within the residential flats which will be linked to the fire alarm (due to be installed by 2 August 2019)otherwise referred to as “the Works” relating to Flats 1-14 at Saffron Heights, 28 Saffron Hill, London EC1N 8FA (“the Building”).

The application

1. The tribunal received an application for dispensation from the s20 consultation requirements, under section 20ZA of the 1985 Act on 30 July 2019.
2. Directions were issued on 15 August 2019. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the Respondent parties has objected to this application or requested an oral hearing. The paper determination took place on 21 October 2019.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Building consists of fourteen residential flats. The Applicants are the head lessors of the internal residential parts of Saffron Heights and the Respondents are the leaseholders of the flats.
5. The Applicants seek retrospective dispensation in relation to the Works, which have now been completed.

6. The Applicants set out the grounds for seeking dispensation in the application and a supporting bundle of documents provided to the tribunal on 4th October, which can be summarised as follows:
 - (a) A letter from London Borough of Camden dated 8th July (p16) confirming that they propose to carry out an inspection of the premises with London Fire Brigade following a fire risk assessment report showing deficiencies to fire safety measures at the property.
 - (b) Following the inspection, a subsequent letter from London Borough of Camden dated 23rd July (p19) sets out the urgent temporary measures to be taken by the building managers and the remedial works to be undertaken to the building.
 - (c) On the 7th and 27th August 2019 the managing agents sent letters to each of the residents, setting out the reasons for the proposed works and enclosing a copy of the Tribunal's directions, application form and letters and email correspondence from and with Camden Council and London Fire Brigade (see for example p19-34, sample at p37).
 - (d) The Works were undertaken by Cooltech Environmental Engineering Ltd and three invoices were provided (p65-69). The Applicants state that a section 20 notice was served on the 24th July 2019 covering points (1) and (3) above. (However, these documents were not provided to the Tribunal in the Applicants' bundle.)
 - (h) The Applicant seeks dispensation upon the grounds that the Works were urgent, given the fire risk to the building and leaseholders.
7. The directions required the Applicants to file with the tribunal a certificate that leaseholders were served with various documentation and any leaseholder who opposes the dispensation application to complete and file response forms with the tribunal, indicating whether they support or oppose the application. The leaseholders of Flats 4 and 8 confirmed that they supported the application. There were no responses from the other Respondents.
8. The tribunal has determined the application based upon the Applicant's bundle, the information set out in the original application form and the completed response forms.

The tribunal's decision

9. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act.

Reasons for the tribunal's decision

10. The Works were urgent, given the potential risk to life to the residents. Given the statutory role of London Borough of Camden and the London Fire Brigade, the Applicants had no choice to speak of in the matter. There was insufficient time for the Applicants to carry out a full s20 consultation with residents of the block which would have taken 3 months or longer. It would be unreasonable to delay the Works whilst the consultation took place. That would have required long term but temporary placement of waking watch officers. Further it appears that the Respondents were kept fully informed regarding the schedule of measures and the need for remedial works.
11. The only two leaseholders that have responded to the application have given their support. There have been no objections and none of the leaseholders have suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the leaseholders have suggested that any terms should apply to the grant of dispensation.
12. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for major works. However nothing in this decision prevents the leaseholders from seeking a determination as to the cost of the Works, pursuant to section 27A of the 1985 Act.

Judge Hargreaves
Duncan Jagger MRICS
21st October 2019

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and

after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).