



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

Case Reference : **LON/00BC/LDC/2020/0023**

Property : **58-62 High Street, Barkingside, Ilford,
Essex, IG6 2DHZ**

Applicant : **Lewis Day Limited**

Respondents : **The leaseholders of the flats within the
property**

**Type of
Application** : **Application under section 20ZA to
dispense with consultation
requirements for a scheme of Major
work**

Tribunal Members : **Judge Daley
Mr W Shaw FRICS**

**Date and venue of
Paper
Determination** : **24 February 2020 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **24.02.2020**

DECISION

Decision of the tribunal

- i. **The tribunal grants dispensation in respect of the major works carried out to the roof area of the premises to the silicone repairs to the top of the lead flashings and applying a coat of Roofdex and patch repairs including jet washing and subsequent drying works and removal of the rubble.**
 - ii. **The Tribunal further grants dispensation in respect of the further work to be undertaken to the roof as set out in the estimate of Avalon 3 Ltd dated 15 January 2020 Estimate 1503 in the sum of £8,690.00 plus VAT**
- ii. **The Tribunal makes no order for the cost occasioned by the making of the application.**

1. The application

- a. The applicant, by an application, dated 6 January 2020 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
- b. The premises which are the subject of the application are a purpose, built block of 4 flats above commercial premises.

The Background

2. Directions were given in writing on 28 January 2020, for the progress of this case.
3. The Directions at paragraph 3 stated that -: “...The only issue for the tribunal 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.**”
4. The Directions also provided that -: *Those leaseholders who oppose the application shall by 11 February 2020 -:*
 - *complete the attached form and send it to the Tribunal;*
 - *and send to the landlord a statement in response to the application with a copy of the reply form. They should send with their statement copies of any documents upon which they wish to rely.*

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

5. The Directions also provided that the tribunal would proceed to deal with this matter as a paper determination unless the parties requested a hearing.
6. The Tribunal has not received a request for a hearing, and further the Tribunal determining this matter considers that this application is suitable for a paper determination.

The Applicant's case

7. On 20 December 2019 the Applicants managing agent for the premises were notified that there was a leak from the roof area above the flats and that it was causing extensive water ingress in flat 58A and a very damp smell inside the premises. (Photographs of the damp staining in the flat were enclosed as part of the bundle of evidence.)
8. Due to the urgent nature of the work, contractors Avalon 3 Limited were engaged and were instructed to attend the premises and carry out temporary repairs to the roof. Full access was obtained between the 22 and 23 December and temporary repairs were undertaken in the total sum of £4908.00 (invoices 2601, 2612, and 2613).
9. Retrospective dispensation is sought in respect of the costs of this work, and dispensation is also sought to enable the more extensive and permanent repairs to be undertaken. The Tribunal has been provided with two estimates for the additional roof work. One from FHC Painting and Renovation Limited in the sum of £13,500.00 excluding VAT and the other from the company who carried out the urgent works Avalon 3 Limited in the sum of £8,690 excluding VAT. The Applicant wishes to nominate Avalon 3 Ltd to undertake the work.
10. In their written estimate Avalon 3 Limited stated "...Because the entire roof was jet washed before Christmas, this would not need to be carried out again if the Roofdex System is applied before the end of March 2020." This is not set out in the Applicant's application; however, it may explain why they wish to carry out further works without undertaking the full section 20 consultation process under Section 20 of the Landlord and Tenant Act 1985.
11. The Applicant provided detailed photographs of the roof area and the work that had been undertaken to date. The Applicant in their application stated that the leaseholders would be sent an email advising of the urgency of the repairs to the roof. No information was provided within the bundle to confirm that this occurred, or to provide details of the response from the leaseholders if any.
12. No information was received from any of the tenant's indicating their opposition to the application for dispensation.

The tribunal's decision

13. The Tribunal having considered all the circumstances in this case, has decided that it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the work involving the roof repairs to the premises.
14. Further the Applicant **shall within 28 days** provide the Respondents with information of the full scope of the work, details of who the contract was awarded to, how the contractor was selected and the estimated costs to be paid by each leaseholder.

Reasons for the decision

15. The Tribunal, in reaching its decision, had to consider whether it was reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: "*Whereas application is made to a leasehold valuation 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 it is reasonable to dispense with the requirements*".
16. The Applicant has in their case provided information upon which it can be found on a balance of probabilities that the work undertaken was urgent, and that there is good reason, that is the potential escalation in the costs to undertake the necessary work without fully under section 20 due to the urgent nature of the work and the on-going risk of damage to the premises, and the time need to carry out a full, section 20 consultation exercise.
17. The Tribunal noted that although the leaseholders had been informed about the application none of the leaseholders had set out any objection to the proposed work.
18. Accordingly, the Tribunal is satisfied that the works undertaken were urgent and that in these circumstances the consultation procedure ought to be dispensed with. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985 for this very limited aspect of the work. **Given this, the parties attention is drawn to the fact that the Tribunal have not made a determination on the reasonableness and payability of the service charges under Section 27 A of the 1985 Act for this work.**
19. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable

(on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.

20. There were no applications for costs before the tribunal.

Judge Daley

Date 24 February 2020

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.]

1. **S20ZA Consultation requirements: supplementary**
 - (1) Where an application is made to a leasehold valuation 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. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.