



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

Case Reference : **LON/00BK/LDC/2020/0080**

HMCTS Code : **P:PAPERREMOTE**

Property : **64 Marylands Road,
London W9 2DR**

Applicant : **Fairdale Property Trading Ltd**

Respondent : **Ms Claire Bradshaw**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for a scheme of works
following an Improvement Notice under
the Housing Act 2004**

Tribunal Member : **Ms A Rawlence MRICS**

**Date and venue of
Paper Determination** : **19 October 2020, decided on the papers.**

Date of Decision : **19 October 2020**

DECISION

Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper.

Decision of the tribunal

- I. The tribunal grants dispensation in respect of the works to the common parts in 2014 and 2015 at the premises known as 64 Marylands Road, London W9 2DR.**
- II. The Tribunal orders for the cost occasioned by the making of the application and any associated administration costs not to be added to any future service charges.**
- III. The Tribunal notes that details of the costs have been provided to the leaseholder/respondent.**

The Application

1. Fairdale Property Trading Ltd ('The Applicant') by an application dated 22 April 2020 sought retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('The Act') from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. 64 Marylands Road, London W9 2DR 3LP ('The Property') which is the subject of the application is a purpose-built building of 4 flats over 4 floors.

The Background

3. Directions were given in writing on 4 August 2020, for the progress of this case.
4. By 29 September 2020 the Applicant was to send a bundle of documents itemised in the Directions to the Tribunal and any Respondent who had opposed the Application.
5. The Directions also provided that the application could be determined on the basis of written representations. However, both parties were given the option of making a request for a hearing by 1 September 2020. Neither the Applicant nor the Respondents have requested a hearing, and the Tribunal are satisfied that there is sufficient information before it to enable it to decide this matter without injustice to any party without a hearing.

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

6. The Directions further stated that the Tribunal would not inspect the Property but, where necessary, will rely upon any plan and photographs provided by the parties.

The Applicant's case

7. The Applicant is the freeholder of the subject property, a 4-storey terraced building containing 4 flats. The Respondent is the lessee of the flat in the basement. Two other flats have been retained by the Applicants and the top floor is leased.
8. The local authority is the City of Westminster. The authority requested an electrical survey in early 2014 and as a result the Applicant's predecessor-in-title, Leader Securities Ltd, carried out electrical works to the common parts on 3 April 2014.
9. They also served Improvement Notices on Leader Securities Ltd, under the Housing Act 2004.
10. The Improvement Notice relating to the common parts was appealed this to the Tribunal (case ref LON/00BK/HIN/2014/0022) but the appeal was rejected.
11. As a result, Leader Securities were required to carry out works – installation of fire alarm system and installation of emergency lighting and fire doors to be started in early March 2015 and completed 4 weeks thereafter.
12. The resulting costs to the Respondents for both sets of works (paragraphs 8 and 11) were sufficient to engage the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
13. However, Leader Securities felt they had insufficient time to carry out the consultations in both cases and so did not do so.

The Respondent's case

14. The Applicant referred to Section 20 notices being served by the then Freeholder, Leader Securities, to carry out internal decorations to the communal parts of the building. These Section 20 notices were issued two years prior to Westminster requiring the building to be licensed as a HMO, and, specifically, did not include the works, detailed in Westminster's Improvement Notices dated 7th May 2014, to comply with HMO requirements.

15. The Tribunal determined that the works to the common parts be commenced within 4 1/2 months, plus 21 days.
16. The Applicant states that the Section 20 process would not have been viable for the work to commence before 27 February 2015. This is misleading, as the date the Tribunal required work to commence would have been the second week in April 2015, allowing time for the Section 20 process.
17. The Table of Costs, supplied by the Applicant, requires further breakdown. The Respondent would have queried these figures had they been made available to her as part of the Section 20 Notice process.
18. The Respondent would also have nominated tradesmen to provide comparable quotes, which the Applicant was unable to obtain.
19. On the list of outstanding charges provided previously by the Applicant's managing agents, the Respondent can identify the entries that correspond to the invoices, submitted by the Applicant. There are, however, a number of other charges for the same period that should potentially be included as part of these HMO compliance works.
20. Details from Outstanding Charges Document (30% of total amount).
 - Surveyor - project management fee. £1,028.48
 - Management charge - liaising with the contractors/council inspector, site inspection work, reviewing specification and quotation 2013. £888.00
 - Works to timer lights in common area - June 2013 £35.28
 - Works to repair and refit stained glass to common front door - July 2013. £154.50
 - Common parts electrical works - December 2013. £129.60
 - Common parts lighting 2013. £37.72
 - Fire risk assessment - July 2014. £75.00

The Tribunal's decision

21. The Tribunal, having considered all of the circumstances in this case, has decided that it is reasonable to dispense with the statutory consultation requirements of section 20 of the Act in relation to the electrical works to the common parts at The Property in April 2014.
22. The Tribunal has decided that it is reasonable to dispense with the statutory consultation requirements of section 20 of the Act in relation to the works that were necessitated by the Improvement Notice for the common parts and carried out in March 2015.

23. The Tribunal notes the Respondent's argument that consultation could have been carried out if the time frame had been longer. In fact, the Tribunal's decision on the Improvement Notice stated 4.5 months **which allows a period of 21 days for an appeal to the Upper Tribunal.** So the start date for the works was early March 2015 and given the Christmas period, the Tribunal finds there was insufficient time for consultation and accepts that the Applicant wished to await the Tribunal's decision before engaging in the works.
24. The Tribunal notes that both parties knew of the involvement of the Local Authority as notices had been served on both of them. It would have been prudent for the Applicant to engage with the Respondent in the period before the works were undertaken and it is only recently that an application has been made under Section 20ZA of the 1985 Act. It therefore determines that no costs of this application or associated administration charges should be added to any future service charge.
25. The Respondent has queried various invoices and these issues should be addressed by an application under Section 27 A of the 1985 Act.

Reasons for the decision

26. 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: "*Where as 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*".
27. The Tribunal find that the Applicant was unable to complete a section 20 consultation exercise fully in the case of the electrical works due to the urgent nature of the work and, in the case of works to be carried out under the Improvement Notice, due to the compliance date.
28. Accordingly, the Tribunal is satisfied 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 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.**
29. The Respondent 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.

Appeal

30. 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.
31. 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.
32. 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.
33. 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.

Anthea J Rawlence
Chair

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.