



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

Case Reference : **LON/00BB/LDC/2020/0139**

HMCTS Code : **P:PAPERREMOTE**

Property : **16 Plashet Road,
London E13 0PU**

Applicant : **Orchidbase Ltd**

Representative : **Michael Richards & Co**

Respondents : **Miss M Labocetta (Flat A)
Ms Samantha J Smith (Flat B)
M P Kaisey (Flat C)**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for emergency repairs to
the roof**

Tribunal Member : **Mrs A Rawlence MRICS**

**Date and venue of
Paper Determination** : **8 December 2020, decided on the
papers.**

Date of Decision : **8 December 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 urgent repair works to the roof at the premises known as 16 Plashet Road, London E13 0PU**

- II. The Tribunal orders that details of the cost together with an estimate of the service charges payable by the leaseholders shall be provided to the leaseholders within 28 days, if not already done so.**

The Application

1. Orchidbase Ltd ('The Applicant') by an application received 21 August 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. 16 Plashet Road, London E13 0PU ('The Property') which is the subject of the application is a converted building of 3 self-contained flats over 3 floors.

The Background

3. Directions were given in writing on 6 October 2020, for the progress of this case.
4. By 17 November 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 10 November 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 converted 3 storey residential property built in the 1900s and converted in the 1980s.
8. The Respondents are the lessees of the three flats in the property.
9. On 20 July 2020 the Applicant was notified of a major leak to the roof of the property.
10. The property was inspected on 21 July 2020 when it was ascertained that the leak was due to various slipped tiles.
11. There was already a section 20 consultation exercise with regard to replacing the roof but, in view of the urgency of these works, it was decided that the repairs could not wait until the consultation for the major works was concluded.
12. The Tribunal notes that it was not possible to carry out a consultation exercise with regard to these urgent repairs as the works were started in the week beginning 3 August 2020 to make the property water tight.
13. The Tribunal clarifies that this decision is in regard to the urgent roof repairs and not the replacement of the roof.
14. The Tribunal notes that there has been no objection from the Respondents.

The Tribunal's decision

15. 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 urgent roof repairs at The Property in August 2020.

Reasons for the decision

16. 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*”.

17. The Tribunal find that the Applicant was unable to complete a section 20 consultation exercise fully in the case of the roof repair works due to the urgent nature of the work.
18. 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.**
19. The Respondents 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

1. 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.
2. 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.
3. 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.
4. 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.