



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

Case Reference : **LON/00AY/LDC/2020/0222**

HMCTS Code : **P:PAPERREMOTE**

Property : **Queenswood Court, Kings Avenue,
London SW4 8EB,**

Applicant : **Queenswood Court Freehold
Company 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
Ms A Rawlence MRICs**

**Date and venue of
Determination** : **03 March 2021 heard remotely**

Date of Decision : **15 March 2021**

DECISION

Covid-19 pandemic: description of hearing: P: PAPERREMOTE

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P: PAPERREMOTE A face-to-face hearing was not held because all issues could be determined at a paper determination. The documents I have referred to are within the electronic bundle of documents, the contents of which have been noted and taken into account by the Tribunal. The order made is set out at the end of the reasoning

Decision of the tribunal

- I. The tribunal grants dispensation in respect of the major works relating to the roof repairs at the premises. Dispensation is granted subject to-** Details of the contractor undertaking the work, including any guarantee concerning the work and the length of the period of guarantee. Shall be provided to each leaseholder.
- II. Copies of any reports or photographs of the disrepair that exist should be made available for inspection by the leaseholders on 72 hours' notice
- III. The Tribunal makes no order for the cost occasioned by the making of the application.**
- IV. The Tribunal orders that details of the cost together with an estimate of the service charges payable by each leaseholder shall be provided to each leaseholder within 28 days.**

The application

1. The applicant by an application dated 19.11. 2020, sought an order for dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. The building which is the subject of the application is a purpose-built block of 28 flats, with four communal entrances. There are four basement flats which have their own entrance. There are also 33 garages, with four of those garages being part of the building. The other garages are separate and can be accessed at the rear of the property via gates. A communal water tank system is housed in one of these garages.

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

Preliminary

3. On 8 January 2021, Directions were given in writing for the progress of this case. The Tribunal decided that this case was suitable for a paper determination pursuant to rule 5 (i) and Rule 31(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
4. The Directions stated a paragraph (4) 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.**”
5. The Directions (paragraph 2) also provided that -: **By 22 January 2021** *Those leaseholders who oppose the application shall by 5 February 2021 complete the attached form and send it to the Tribunal by email to both the applicant/landlord and to London.Rap@justice.gov.uk; 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.*
6. The Directions provided that unless requested by the parties, the application could be determined on the basis of written representations during the 7 days commencing 01 March. However, the parties were given the option of making a request for a hearing by 15 February 2021. On 20 January 2021, Ms Fay Bruns of Rendall and Rittner managing agents, wrote to the tribunal by email, and notified the Tribunal that all of the leaseholders had been served with the application form and the directions given by the Tribunal.
7. On 3 March 2021, this Tribunal decided that this matter was suitable for a paper determination. The Tribunal noted that the directions had been complied with by the applicant, and no request having been received by either party for a hearing.

The Background

8. The Application was made by Ms Fay Bruns, Senior Property Manager of Rendall and Rittner Managing agents on behalf of the landlord. The application stated that there had been reports of a number of severe roof leaks at the premises which are affecting top floor flats and the communal area. The managing agent was concerned that if this continued without urgent repairs being carried out this could cause longer term damage to joists in the roof and a potential roof collapse.
9. Scaffolding was erected at the premises during the week beginning 9th November and several roof surveys have been carried out to confirm the extent of the damage.
10. The managing agents were advised that -:
 - There were multiple cracked slates to the rear elevation
 - The flat asphalt roof to the communal area has sections of blistering; the roof appears to have been previously coated in Acrypol which has failed. The cornicing directly above the flat roof has a vertical crack with substantial moss growth. Both these defective areas account for the ingress being experienced to the ceiling of the common parts.
11. Although the first parapet gutters lead lining is in good condition, one cracked slate to the rear of the gutter needed replacing.
12. The second parapet gutter which is directly above flat 41 kitchen where the ingress is present had sections of defective leadwork which also needed replacing.

The Applicant's case

13. The Applicant in their application stated that they had informed the leaseholders of their intention to erect scaffolding via its online portal between 5 November -9 November 2020, and had also kept the leaseholders who were directly affected by the leaks informed of what the landlord intended to do and also of the time scales involved.
14. A notice of intention was issued to the leaseholders on 16 November 2020. However, in their application, the applicant stated that the works were urgent as currently two flats and the communal area was being seriously affected by water penetration. The Applicant considered that the longer the disrepair continued unabated the greater the likelihood of more extensive long term damage which would affect the joist and could lead to a complete collapse of the roof.
15. The application stated that given the urgency, the plan was for the works to commence within 2-3 weeks of the application. The estimated costs of the work were £20,479.80. The works had started to affect the communal area and the application stated the intention to carry out the work without further delay. Given the urgency of the work

16. The Tribunal was not provided with any details of the inspection reports, copies of photographs or the estimate of the costs of the work and the details of the contractor or any updating information concerning the works have been completed.

The Respondents' case

17. The Tribunal was provided of the details of 29 leaseholders; Ms Fay Bruns had confirmed serving the application and the directions on the leaseholders.
18. The leaseholders who objected were required to notify the Tribunal of their objection by 22 January 2021. As at the date when this matter was considered by the Tribunal, no objections had been received. Given this the Tribunal has no information as to any objections to these works.

The tribunal's decision

- I. 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 1985 Act, in relation to the work of repairs to the roof estimated to cost £20,479.80.
- II. The Tribunal is concerned about the limited information which has been provided to this tribunal in support of the application. Given this the Tribunal has directed that additional information be provided to each leaseholder as a term upon which dispensation is granted.
- III. Details of the contractor undertaking the work, including any guarantee concerning the work and the length of the period of guarantee. Shall be provided to each leaseholder.
- IV. Copies of any reports or photographs of the disrepair that exist should be made available for inspection on 72 hours' notice.
- V. Further the Applicant **shall within 28 days** provide the Respondents with information of the full scope of the work undertaken, which may include access to digital photographs/videos.
- VI. The Respondent shall provide sample bills, and details if known of how the likely percentage of the cost payable by the landlord and that payable by the leaseholders.

Reasons for the decision

- VII. 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”*.
- VIII. The Tribunal finds that the Applicant was unable to consult fully under section 20; due to the urgent nature of the work as the nature of the repairs needed meant that there was potential for further damage to the fabric of the building and for inconvenience to the leaseholders, in particular those directly affected.
- IX. Accordingly, the Tribunal is satisfied that the works undertaken were urgent and that in these circumstances the consultation procedure ought to be dispensed with.
- X. 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.**
- XI. 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.
- XII. In respect of the application for costs before the tribunal. The Tribunal noted that No application was made for the cost of the application fee. Accordingly no order has been made concerning the costs of the application.

Judge Daley

Date 15/03/21

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.