



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

Case Reference : **LON/00AU/LDC/2020/0098**

HMCTS Code : **P: PAPERREMOTE**

Property : **32 Barnsbury Road, London N1
OHD**

Applicant : **Mrs R Morgenbesser**

Respondents : **(1) The leaseholders of the flats
within the property
(2) BPT (Bradford Property Trust)**

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
Paper Determination** : **23 September 2020, heard
remotely and decided on the papers**

Date of Decision : **28 September 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 major works relating to the roof work and the damage to the wall at the premises known as 32 Barnsbury Road.**
- II. **The Tribunal makes no order for the cost occasioned by the making of the application.**
- III. **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

The applicant by an application, dated 3 June 2020 sought retrospective 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.

The building which is the subject of the application is a large Victorian house divided into 4 self-contained flats.

The Background

1. Directions were given in writing on 28 August 2020, for the progress of this case.
2. The Directions at paragraph (4) 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**

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

issue of whether any service charge costs will be reasonable or payable.”

3. The Directions also provided that -: *Those leaseholders who oppose the application shall by 7 September 2020 -: 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.*
4. The Directions also provided that unless requested by the parties the application could be determined on the basis of written representations during the 7 days commencing 21 September 2020. However the parties were given the option of making a request for a hearing by 7 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.

The Applicant's case

5. 10. On 12 May the second respondent wrote to the Applicant to inform her that they had served a notice of repair on her in respect of the condition of the premises as they considered the current condition to be dangerous and require immediate attention.
6. The notice of the same date required the freeholder to undertake remedial work to the chimney which had collapsed and the front wall which was bowing. The state of the premises was referred to the freeholder's local authority and on 15 May 2020 a letter was sent from Building Control Service which stated that Debris falling of the chimney and a bowing front wall had been brought to the Building Control's attention. "... In order to avoid further deterioration and it becoming a potential danger, I bring this matter to your attention so that you may take appropriate action..." The letter was signed by Geraldine Knipe Head of Service- Development Management and Building Control.
7. The Applicant provided additional information including a letter from Gavin Rees Tree Officer who set out that the bowing wall damage was caused by a mature tree which was subject to a tree preservation order. Photographs which illustrated the damage caused by the tree were included within the bundle. The Tribunal were provided with a copy of a letter dated 1 September 2020 from Edessa Finance Limited Managing agent for the premises confirming that the roof work had

been carried out. No updated information was provided concerning the tree. The Tribunal was not provided with details concerning the cost of the work.

8. No objection was received from any of the respondent leaseholders.

The tribunal's decision

9. 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 to the roof of the building known 32 Barnsbury Road and the front wall.
10. 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 cost of the work and any estimate in relation to the wall and the removal of the tree. And the sum to be paid to each leaseholder.

Reasons for the decision

11. 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"*.
12. The Tribunal find that the Applicant was unable to consult 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.
13. 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.
14. 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.

15. 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.
16. There were no applications for costs before the tribunal.

Judge: Daley

**Date: 28
September
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.