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

| | | |
|---|---|---|
| **Case reference** | **:** | **LON/00AY/LDC/2021/0188** |
| **HMCTS code** | **:** | **V: VIDEOREMOTE** |
| **Property** | **:** | **Flats 1-30 Davidson Gardens, London SW8 2XB** |
| **Applicant** | **:** | **Grainger Invest No.2 LLP** |
| **Representative** | **:** | **Mr M Palfrey, counsel instructed by Seddons Law LLP** |
| **Respondent** | **:** | **Various leaseholders of Flats 1-30 Davidson Gardens, London SW8 2XB** |
| **Representative** | **:** | **Ms C Crampin, counsel instructed by Streathers Solicitors LLP** |
| **Type of application** | **:** | **Section 20ZA application (withdrawn) – rule 13 costs and section 20 of the Landlord and Tenant Act 1985** |
| **Tribunal members** | **:** | **Judge Tagliavini**<br>**Mr Trevor Sennett MA FCIEH** |
| **Venue & date of hearing** | **:** | **10 Alfred Place, London WC1E 7LR**<br>**16 November 2021** |
| **Date of decision** | **:** | **17 December 2021** |

---

**DECISION**

---

## Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to] by the parties. The form of remote hearing was V: VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in a bundle of 399 pages, the contents of which have been considered by the tribunal.

## Decisions of the tribunal

(1) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees named by the applicant in this application through any service charge.

(2) The tribunal declines to make any order for costs under rule 13 of The Tribunal Procedure (First-tier) (Property Chamber) Rules 2013.

## The application

1. The Applicant had sought a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in an application dated 26 July 2021, seeking the tribunal's dispensation of the section 20 consultation requirements for works relating to a full roof replacement (pitched roof front and back) and flat roof terraces.

2. The subject premises comprise 30 residential flats which are held on a mixture of long leases, AST's and regulated tenancies. There are also 28 commercial units owned by Grainger, who contribute towards the Service Charge for external items in addition to their rent. There are 17 privately held long leasehold units with the remaining 13 owned by Grainger PLC of which the applicant is a wholly owned subsidiary.

3. Shortly before the hearing, on 15 November 2021, the application for dispensation from consultation was withdrawn by the applicant. The respondents sought an application under section 20C of the 1985 Act in addition to an order for costs under rule 13 of The Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 ('the 2013 Rules).

## The hearing

4. The Applicant was represented by Mr Monty Palfrey of counsel at the hearing and Ms Cecily Crampin appeared on behalf of 7 of the 17 long leaseholders. As the remaining applications concerned questions of

costs, the tribunal invited the respondents to present their argument with the applicant responding.

**The respondent's applications on costs**

5. Ms Crampin submitted that as the respondents had effectively been successful in their objections to the applicant's section 20ZA application, they should not now be required to bear the landlord's costs as it would not be 'just and equitable' to require them to do so; *Bretby Hall Management Company Limited and Christopher Pratt* [2017] UKUT 70 (LC).

6. In support of the application for an award of costs of £26,037 (inc. VAT) incurred by 7 of the 17 long leaseholders under rule 13 of the 2013 Rule, Mr Crampin submitted that the application should not have been made in the first instance, as the respondent's expert's report from Mr Kevin James Marshall BSc (Hons) MRICS dated 2 November 2021 and served on the applicant on 3 November 2021, made it clear that patch repairs were required, not a full roof replacement. Ms Crampin submitted that the applicant had been aware of this view prior to making its application for dispensation from consultation.

7. Ms Crampin submitted that the applicant had behaved unreasonably to the standard identified in *Willow Court Management Co (1985) Ltd v Sinclair* [2016] UKUT 290 (LC) and the applicant should have known a full roof replacement was not required at that time.

**The applicant's case on costs**

8. Mr Palfrey submitted that the application under section 20C of the 1985 Act should not be granted by the tribunal. Mr Palfrey submitted that such an application should not in any event be granted' lightly' as it had been appropriate to make the application in the first instance, as the applicant had relied on the evidence of its own expert, Earl Kendrick at that time.

9. Mr Palfrey submitted that had consultation gone ahead, the costs of the experts would have been passed to the leaseholders in any event, through the service charge accounts. These charges might then have become subject to an application under section 27A of the 1985 Act and should not at this stage be borne by the applicant.

10. Mr Palfrey criticised the amount of costs claimed by 7 of the long leaseholders under rule 13 of the 2013 Rules as excessive. Mr Palfrey submitted that the leaseholders had failed to satisfy the test set out under rule 13 and that the applicant had not at any time acted frivolously, vexatiously or otherwise in a manner that amounted to an abuse of process. Mr Palfrey submitted the applicant had acted

reasonably in relying upon its initial expert's opinion, and that it had withdrawn its application once it had an opportunity to discuss the late served report of the leaseholders.

11. From the respondents' Statement of Case in Reply served on 13 October 2021, it was only made clear at that point, that not all works were objected to, but rather their extent and cost. In all the circumstances, the respondent had not made out its case for an award of costs under rule 13.

## The tribunal's decision and reasons

## Rule 13 costs

12. The tribunal finds that the respondent has failed to satisfy the high standard set by rule 13 for an award of costs under the three-stage test.

Rule 13(1) states:

> (a) costs have been incurred as a result of any "*improper, unreasonable or negligent act or omission on part of any legal or other representative which is unreasonable to expect that party to pay*", the Tribunal may order payment of wasted costs.
>
> (b) a person who has acted: *"unreasonably in bringing, defending or conducting proceedings", the Tribunal may order payment of* unreasonable conduct costs.

13. In making its determination the tribunal reminds itself of the Upper Tribunal's determination of Willow Court and the three stage test it set out, which tribunals are required to follow in making its determinations under r.13. The first of these stages is:

> Has the person acted unreasonably?
>
> The UTLC said that *'if there is no reasonable explanation for the conduct complained of, the behaviour will be adjudged to be unreasonable, and the threshold for making of an order will have been crossed.'*

14. The tribunal finds that the applicant provided a reasonable explanation for making its application for dispensation, based on the expert's advice at that time. Consequently, the tribunal finds that the first test has not been met and the application for r.13 costs must fail.

15. For completeness, in considering whether any Order should be made under r.13, the tribunal would have been minded to exercise its discretion and would not have made an order for costs under

r.13. The tribunal finds that works to the roof and flat roof terraces are in any event required and are likely to be carried out in the near future by the applicant. In any event, the tribunal finds the costs claimed by the 7 leaseholders to be excessive and is unlikely to have made an award for this amount, if any.

## Application under s.20C

16. The tribunal determines that in light of the applicant's withdrawal of the entirety of its application, it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charges of the 17 leaseholders named in this application.

**Name:** Judge Tagliavini **Date:** 17 December 2021

## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).