



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

Case Reference : **LON/00AN/LDC/2021/0264
P: PAPERREMOTE**

Property : **190 Fulham Palace Road, London
W6 9PA**

Applicant : **Aberdeen City Council Pension
Fund**

Representative : **Workman LLP (Managing Agents)**

Respondents : **Mr Alexander McPhee McKinnon &
Ms Ann Murphy (First Floor Flat)
Mrs Judith Cope (Second Floor Flat)**

Representative : **Unrepresented**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985
Dispensation with consultation
requirements**

Tribunal member(s) : **Judge Donegan**

**Date of Paper
Determination** : **02 February 2022**

Date of Decision : **02 February 2022**

DECISION

This has been a remote hearing on the papers which has not been 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. The documents that I was referred to are in a bundle of 234 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in relation to the following qualifying works at 190 Fulham Palace Road, London W6 9PA ('the Property'):**
- (i) investigations of roof defects and initial repairs, as detailed at paragraphs 6 and 7 of this decision,**
 - (ii) ongoing scaffold costs, and**
 - (iii) proposed roof repairs, as detailed at paragraph 8 of this decision.**
- (b) No terms are imposed on the grant of dispensation.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application is dated 06 October 2021 and directions were issued on 17 December 2021. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 02 February 2022.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property is a three-storey end of terrace building with a retail unit on the ground floor and two residential flats above (one per floor). The applicant is the freeholder of the Property, which is managed by Workman LLP ('WL'). The respondents are the leaseholders of the two flats.
5. WL were notified of water ingress to the Second Floor Flat ('SFF') in 2021 and approached various contractors to investigate and rectify the problem. Only one responded, Leonard Oakley Contracts Limited ('LOCL'), who produced an estimate dated 12 August 2021 in the total sum of £4,140 (excluding VAT). This figure included the cost of erecting scaffolding to the front elevation and is above the section 20 consultation threshold. Given the urgent need for repairs, WL abridged the consultation. They served notice of intention on 19 August 2021,

giving the respondents 7 days to make written observations. They then served a combined statement of estimates and notice of award of contract on 30 September 2021.

6. LOCL undertook initial investigations in early October 2021 and identified various maintenance and health and safety issues. They also cleared an accessible gutter. They recommended additional scaffolding to the side elevation, which would require a licence and increase their costs. WL then submitted the Tribunal application and reported the position to the respondents.
7. Additional scaffolding was erected on 19 November and a further roof investigation was undertaken on 22 November. LOCL reported that the roof was in terrible condition and recommended the involvement of a structural engineer. They undertook localised repairs to the front elevation, to remedy the original source of the leak.
8. WL instructed a building surveyor to draw up a specification and project manage the works. They also reported the position to the leaseholders and obtained the following tenders for comprehensive roof repairs (all excluding VAT):
 - Vesta Construction Group Limited - £27,440
 - LOCL - £26,950
 - DPC Group - £53,870

The tenders are being considered by the building surveyor and the contract will be awarded, and works instructed, following the Tribunal's decision.

The grounds of the application

9. Initial grounds were detailed in the application form, and these were updated in a comprehensive statement of case from Ms Carolyn Tull of WL. The determination bundle also contained LOCL's reports, estimates and invoices, mail correspondence passing between WL and the respondents and the specification and tenders for the comprehensive roof repairs.
10. In summary, WL contend that investigations and initial repairs were urgent due to the water ingress to the SFF. The full extent of the roof defects only came to light during the investigation on 22 November 2022 and they involved a building surveyor, given the nature of the defects and the need for specialist advice.

The Tribunal's decision

11. The Tribunal grants dispensation for the roof investigations, initial repairs, ongoing scaffold costs and the proposed comprehensive repairs. No terms are imposed on the grant of dispensation.

Reasons for the tribunal's decision

12. The Tribunal accepts the investigations and initial repairs were urgent, given the water ingress to the SFF and the risk of further damage. A full section 20 consultation would have taken three months or more and considerably delayed these repairs. WL acted promptly and reasonably in undertaking the abridged consultation, instructing LOCL to investigate the problem and then reporting to the respondents. Further, it is reasonable and cost effective to undertake the comprehensive roof repairs whilst the scaffolding is in place, rather than embarking on full consultation. The scaffolding acts as a safety barrier and provides protection from any potential falling tiles or other roof details/debris.
13. None of the respondents have contested this application or identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.
14. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the consultation requirements.
15. This decision does not address the cost of the various works or whether the respondents are liable to contribute to the cost via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act.

Name: Judge Donegan

Date: 02 February 2022

Rights of appeal

1. 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.
2. 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.

3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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) the appropriate 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.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.