FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LSC/2021/0253.**
HMCTS code (paper, video, audio)	**:**	**V: CVP REMOTE.**
Property	**:**	**Flats 1,4,5,7,8,9,10,12,14,15 and 16 Turnour House, Walburgh Street, London E1 2NJ.**
Applicant	**:**	**Lepex Holdings Limited.**
Appearances	**:**	**Mr. S. Armstrong of Counsel.** **Mr. S. Ross, Harold Benjamin Solicitors.** **Mr. H. Broder**
Respondent	**:**	**The leaseholders as per the application.**
Representative	**:**	**Mr. S. Woolf of Counsel.** **Mr. T. Matthews.**
Appearances	**:**	**Mr. M. Hassan**
Type of application	**:**	**Preliminary hearing to establish compliance with S.20 Landlord and Tenant Act 1985 in respect of Flat 5.**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Ms. L. Crane.**
Venue	**:**	**Remote Video Hearing.**
Date of decision	**:**	**11 February 2022.**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented 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 180 pages, plus an authorities bundle of 58 pages, the contents of which have been noted. In addition, the tribunal received skeleton arguments/statements prior to the hearing.

The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal determines that on the balance of probabilities, the applicants have complied with the requirements to consult the leaseholders of Flat 5 under S.20 Landlord and Tenant Act 1985 and in relation to the proposed major works contract.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents.

2. The application is dated 19 July 2021 and concerns the service charge year 26 March 2021 to 25 March 2022. The sum said to be in dispute is £609,500 relates to proposed major works. .

3. A case management hearing was held on 17 August 2021 following which Judge Korn gave directions. It was identified at the case management hearing that there were two preliminary issues that required determination prior to any substantive hearing. These were:

    (i) Whether as a matter of lease construction the applicant was entitled to charge for major works in advance, and

    (ii) Whether the applicant had complied with the statutory consultation under S.20 of the 1985 Act.

4. The parties were directed to produce a statement of case and statements of any witnesses on which they wished to rely. The parties complied with that request.

5. Following the service of the statement of case, the respondent leaseholders conceded that the lease enabled the landlord to claim the major works costs in advance, and therefore that issue is no longer before this tribunal.

6. Concessions were also made by each of the leaseholders with respect to the second matter, namely whether there had been good service of the S.20 Notices. Each of the leaseholders, with the exception of Messrs. Tajmal, Ghulam and Moshin Hassan of Flat 5, accepted that there had been good service. Therefore, the only matter before the tribunal is whether there had been good service of the S.20 Notices to Messrs Hassan of Flat 5.

The hearing

7. The Applicant was represented by Mr. Armstrong of Counsel, instructed by Mr. Ross of Harold Benjamin, Solicitors. Mr. Broder of OCK Chartered Surveyors gave evidence on behalf of the applicants.

8. The Respondents were represented by Mr. Woolf of Counsel, in attendance were Mr. T. Matthews, Solicitor and Dr. Turner, one of the other respondents. Mr. Moshin Hassan appeared in person.

9. Immediately prior to the hearing the parties handed in further statements of case and reply in which it was conceded that the only issue before the tribunal was whether there had been good service of the consultation notices in relation to Flat 5, and the Respondents agreed that S.7 of the Interpretation Act 1978 applied in this matter and that it was for the respondent to prove that he had not received the Notices under S.20.

10. In addition, it had been agreed that the addresses for service for Mr. Hassan were correct (both e-mail and postal).

The background

11. The property which is the subject of this application is a block of 15 units, 11 of which are let on long leases to the Respondents.

12. The applicants wish to carry out major works on the building,

The issue:

13. As described above the original application required the tribunal to determine two issues, however one of the issues has now been conceded and the only remaining issue is whether or not the landlord complied

with S.20 in relation to Flat 5, the other leaseholders having confirmed that they were properly consulted.

The hearing:

14. Mr. Armstrong cross examined Mr. Hassan. Unfortunately, Mr. Hassan was not a very credible witness. He was able to confirm that the postal address used by the applicants was his office, which was situated within a three-storey building, comprising basement, ground and first floors. He and his brothers occupied the basement and first floor. Another tenant occupied the ground floor. He confirmed that there were no individual post boxes for occupiers, but that the front door to the block had a roller shutter that had a gap in it where the post could be delivered if the shutter was down.

15. He said that during the Covid-19 epidemic he had not gone to the office frequently, perhaps only once a week. Although his brothers also worked with him, and as joint owners and they would all discuss issues relating to the property, he took overall responsibility. He confirmed that he had received correspondence from the surveyors and agents in the past but had not received a copy of the demand dated 21 April 2021. He also confirmed that he knew major works were to be carried out at some time, because he had received letters from the agents three or four years ago. He said that at that time no one really cared about the works because the sum in question was small. He could not help us with the quantum of 'the small amount'.

16. He said that he had only become aware of the requirement for the landlord to consult last year and said that he had been told by a leaseholder. He did not write to the landlord or agent to suggest that he had not received the S.20 Notices, and although he said in evidence that he had phoned the agents, he had not said this in his witness statement.

17. He was not sure whether another occupier of his building could have picked up the notices if they had been delivered but said that he had been in occupation since 1987 but did not say that there were problems in the receipt of post.

18. With respect to his emails, he said that he checked them regularly, as well as his spam box, and informed the tribunal that he does not delete his messages. Mr. Armstrong asked him whether it was possible that one of his brothers had received the e-mails, but he replied that this was not the case because he had asked his brothers. He confirmed that he had received recent e-mails from the agents demanding ground rent and service charge.

19. He was referred to the letter dated 12 May 2021 from Mr. Malik that raised questions regarding the major works. This letter was accompanied by a series of signatures from other leaseholders, one of which was his brother, G. Hassan, who had not produced a witness statement in the proceedings. Mr. Hassan confirmed that his brother had signed the petition, but he had not been aware that his brother had done so and maintained that it was his responsibility to respond to paperwork received.

20. Mr Hassan was not cross examined by Mr. Woolf, and the tribunal only asked questions to clarify his answers.

21. Mr. Armstrong then called Mr. Broder of OCK Surveyors. He was cross examined by Mr. Woolf.

22. He confirmed that he has been responsible for the service of the S.20 Notices and that these had been sent by post and e-mail. Mr. Woolf spent some time going through the individual notices and highlighted for example the one on page 106 showed an email that did not indicate that an attachment had been sent at the same time. This was the case with all of the e-mails that had been sent for the bundle by Mr. Broder's secretary. Mr. Broder maintained that when he sent the e-mails/letters they were all accompanied by the correct notice. Mr. Broder said that it might be a problem with the way in which the evidence had been compiled for the bundle and that 'forwarded' emails did not show attachments, even though they were sent.

23. Mr. Woolf asked Mr. Broder to explain the system used in his office. Mr. Broder said that he dictated the letters, his secretary typed them up, and he then checked them for accuracy. When he was satisfied that they were correct, they were electronically signed and then placed in envelopes by his secretary and taken to the post area. He confirmed that either his secretary or the receptionist franked the post and then placed it in a postbag and took the bag(s) to the Post Office. He said there was no question that post would be lying on the floor as he carried out checks. He confirmed that he relied on the usual procedures in the office for posting letters.

24. Mr. Broder also confirmed that no letters were returned by the Post Office, although he did say that occasionally items were. It appeared from the questioning that the Post Office can identify who has sent a letter by the code on the franking mark.

25. Mr. Armstrong then re-examined Mr. Broder and asked him whether any of the leaseholders had complained that the statutory notices had not been attached to their e-mails or letters, and he confirmed that none had.

26. Mr. Armstrong also sought permission to submit copies of the notices that had been sent by e-mail to the tribunal at the end of the hearing. Mr. Woolf did not oppose this, and the tribunal duly received a copy of a notice with the letter, that had been sent.

Summing Up:

27. Mr. Armstrong summed up his clients' case and confirmed that this was a factual dispute. Either Mr. Hassan had received the notices, or he had not. He said that it was a remarkable coincidence that emails were received but no complaints made that those notices were not attached.

28. He said that there were three options. Either Mr. Hassan was wrong, and the letters were sent and received; that they were sent and not received or that they had not been sent at all. He said that it was again a coincidence that a total of four letters had not been received by Mr. Hassan, and that he could understand one or perhaps two not arriving, but not four. He said that it was statistically improbable that four letters did not arrive.

29. He also said that Mr. Hassan's evidence was not satisfactory. His brother had clearly known that S.20 letters had been sent because he had signed the petition circulated by Mr. Malik, and he would have expected Mr. Hassan and his brother to have had some discussions on the matter. He thought it likely that one of the brothers had picked up the letters but may not have shown it to Mr. Hassan. However, this did not mean that there was bad service of the notices. Neither of the other two brothers had made witness statements and he said that on balance, the notices had been served.

30. Mr. Woolf acknowledged that the respondents had more difficulty than the applicants in this matter. He said that any party trying to prove a negative faced a difficult exercise and there was a huge burden on Mr. Hassan.

31. He accepted that if the applicants could establish on balance that a notice had been attached to the e-mails, then the process fails. He did say that the evidence did not show that e-mails had attachments, and in his view, the respondent succeeded.

32. He suggested that Mr. Broder's evidence was unsatisfactory, and that the evidence pointed to the fact that S.20 notices had not been attached to the e-mails. Mr. Hassan had searched everywhere for his copies but could not find them.

33. He asked did it matter whether the e-mails had been properly received? No, it did not if the notice had been sent by post and e-mail (belt and braces) and accepted that once a letter had been given to the Post Office

then the applicant's liability shifted. He said that the posting process adopted by OCK was inadequate, and that it was insufficient for Mr. Broder who relied on standard processes. No post book was used to confirm letters posted each day, and he said that it was likely that the letters had not been posted at all.

34. He confirmed that in his view the applicants had not fully complied with the S.20 process, with the consequence that the whole process was flawed and had to be restarted.

35. The hearing closed and shortly afterwards the tribunal received a copy of the letter and notice that had been e-mailed and posted to the respondents.

Reasons for our decision:

36. The tribunal felt that Mr. Hassan's evidence was poor. He was unable to help us with respect to the receipt of notices. His evidence was vague and frequently he said that he could not remember what had taken place.

37. We find that the posting process described by Mr. Broder was fairly usual in an office situation. Although a post book may have assisted us, we did not find the process to be flawed as suggested by Mr. Woolf.

38. We were not satisfied from the evidence that Mr. Hassan had not received at least one of the letters, this is because his brother had obviously received the last letter identifying the costs of the project, because he had signed the petition objecting to the financial proposals. We find that he would not have done so without a copy of a notice. If the brothers had not spoken to each other about the notices, this cannot be evidence of bad service.

39. We also find it improbable that four separate notices had not been received by the respondent, and although Mr. Hassan suggested that he never cleared his e-mail box, we again find this improbable, and it may well be that the e-mails were deleted accidentally.

40. We also find it improbable that Mr. Hassan's notices were not sent by OCK. In our view, it is more difficult to omit letters for one flat than include them and on balance we are satisfied that they were sent and probably received by either Mr. Hassan or his brothers.

41. We therefore find that the applicant has complied with the requirements to consult under S.20 of the Landlord and Tenant Act 1985 in relation to Flat 5.

Name: Ms. A. Hamilton-Farey **Date:** 16 February 2022.

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).