FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LDC/2021/0018**
Property	**:**	**The Switch House, 4 Blackwall Way, London E14 9QS**
Applicant	**:**	**(i)First Port Property Services Limited**
Respondents	**:**	**Nicholas Hodder and *20* leaseholders of the flats within the property**
Type of Application	**:**	**Application under section 20C**
Tribunal Members	**:**	**Judge Daley**
Date and venue of Paper Determination	**:**	**20 February 2022**
Date of Decision	**:**	**20/02/2022**

DECISION

Decision of the tribunal

1. The tribunal grants a section 20C Order for the defendants named in LON/00BG/LDC/2021/0018

The application

2. The applicant by an application, made in December 2020, sought dispensation under section 20ZA of the Landlord and Tenant Act 1985, from the consultation requirements, imposed on the Landlord by section 20 of the 1985 Act[1].

The Tribunal granted dispensation and, in its determination dated 9 September 2021, (subsequently amended) determined that-: "*The Tribunal therefore grants dispensation on the following terms-:*

The Applicant ***shall within 28 days*** *provide the Respondents with details of the breakdown of the work, details of the sum to be paid from the reserve and under the provision of the lease the contribution to the costs of the work to be paid by each leaseholder.*

The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they still consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may continue with their application to the tribunal for a determination of their liability to pay the resultant service charge.

The Respondents may write to the Tribunal to ask for the Section 27A application to be set down for a case management conference.

No applications were made for costs before the tribunal."

3. The Respondent made an application pursuant to Section 20C of the Landlord and Tenant Act 1985 for an application for an order that all or any of the costs incurred or to be incurred are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

The Paper Determination

4. The Respondent in submissions dated 27 October 2021, in his application Mr Hodder on behalf of the leaseholders, set out that

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

the Section 20ZA application came about as a result of the leaseholder becoming aware whilst preparing for an application under Section 27A (LON/00BG/LSC/2021/0039) that the Applicant had omitted to consult in respect of major works carried out in 2019.

5. Mr Hodder raised the issue with the managing agent, who made an application for a retrospective Section 20ZA. Mr Hodder submitted that it was reasonable for the Respondents to oppose the Applicant's retrospective Section 20ZA.

6. He submitted that the managing agents had chosen to litigate rather than deal with his query.

7. For reasons of the costs of the work, and the lack of a "plausible reason" why the landlord had failed to carry out a Section 20 consultation. The Respondent also queried the urgency of the work, as he submitted that it was no more urgent in 2019, than it had been in 2011.

8. As a result the Tribunal were asked to make an order pursuant to Section 20C of the Landlord and Tenant Act 1985. This application was made on behalf of Mr Hodder and the 21 respondents whom he represented.

9. In reply the Applicant submitted that the Tribunal should consider whether there is a clause within the lease to allow for the recovery of A's legal costs, and whether it is just and equitable in the circumstances to make a Section 20C Application.

10. In the Response the Applicant raises a number of issues; in respect of the order sought the Applicant stated that the Tribunal does not have jurisdiction to make an order pursuant to section 20C in favour of a person who has neither made "an application under the provision themselves, nor given authority to another to make an application on their behalf."

11. The Applicant set out in paragraphs 12, of their response that the costs are recoverable in accordance with the Sixth Schedule of the Lease, specifically paragraphs 2,7 and 15 of Part F

12. The Applicant asserts that there is a contractual right to recover the costs and given the Tribunal's retrospective dispensation, it would not be just and equitable for the Applicant to be deprived of its cost.

The tribunal's decision and reason for the decision

I. In its decision, the Tribunal noted that-:

II. The Tribunal in making its determination noted that

"...its jurisdiction in this matter is somewhat limited, the scope is set out in Section 20ZA and as discussed by the court in *Daejan –v- Benson (2013)* which requires the Tribunal to decide on whether the leaseholders would if dispensation is granted suffer any prejudice.

The Tribunal finds that there is no prejudice suffered to the leaseholders in dispensing with the consultation requirements. It accepted the submissions of Ms Helmore, that the issues raised by the leaseholders concern the reasonableness and payability of the service charges, as such the respondent still has the right to raise these issues as part of the Section 27A Application and this is the position regardless of whether dispensation is granted."

III. However, the Tribunal found that the Applicant did not consult with the Respondents at the earliest occasion upon which they decided that the works were needed, and instead opted to carry out the work. The Applicant could have made a partial consultation and provided the Respondents with the information set out in VIII of the Tribunal decision.

IV. Although the Tribunal noted that there was no prejudice to the Respondent's in granting the Application to dispense as many of the issues that are relied upon by the Respondents can properly be considered as part of their Section 27A application; this does not mean that the Respondents are at fault and ought not to have opposed the application, or that in doing so they should lose their right to the protection afforded by Section 20C. The tribunal accepted that the Respondents had the right to be consulted at the earliest stage that the landlord became aware that the works were needed. Had the Respondents been consulted and kept fully informed then they may have either consented to, or decided not to oppose the Application.

V. Further, the Tribunal accepts that as a consequence of the Applicant's failure to consult for whatever reason, this meant that it was necessary for them to make an application under Section 20ZA with the attendant risk that it might be defended, and that this would incur costs.

VI. The Tribunal noted that the Respondents had sought an order under Section 20C for the benefit of the Respondents who opposed the application as this had not been considered at the hearing, had it been considered and granted, then the Respondents would have had the benefit of the protection of the Section 20C Application.

VII. The Tribunal accepts that Mr Hodder is continuing this application under his original authority for the 21 leaseholders. Accordingly the Tribunal finds

that the Respondent had authority to make the Application on behalf of the 21 leaseholders who were respondents to the application.

VIII. The Tribunal is satisfied that although there was no prejudice to the Respondents in granting the Application, there were legitimate concerns that the Respondents had, and although the Respondents were not successful in preventing a Section 20ZA order being made, it is just and equitable for an order to be made under Section 20C of the Landlord and Tenant Act 1985, so as to prevent the costs occasioned by the Application in determining the service charges to be paid by the 21 Respondents, who were parties to the Application.

Judge Daley **Date** 20 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

(1)A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2)The application shall be made—

(a) In the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;

(aa)in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b)in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba)in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c)in the case of proceedings before the Upper Tribunal, to the tribunal;

(d)in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3)The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.]