FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2022/0316**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	**:**	**Flats 1 – 42 Ravensroost, 25 – 29 Beulah Hill, London SE19 3LN**
Applicant	**:**	**Ravensroost Management Limited**
Representative	**:**	**Mr Richard Price and Mr Ryan Phelan, directors of the Applicant Company and Lisa Kapper of Acorn Estate Management**
Respondent	**:**	**The leaseholders at the Property**
Representative	**:**	
Type of application	**:**	**Application under s27A Landlord and Tenant Act 1985**
Tribunal member(s)	**:**	**Judge Dutton** **Mrs S Redmond BSC (Econ) MRICS** **Mr J Francis QPM**
Venue	**:**	**Video Hearing 11 April 2023**
Date of decision	**:**	**12 April 2023**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPEREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle of 257 pages, the contents of which have been noted.

DECISION

The tribunal is unable to make an order on this application for the reasons set out below. Accordingly, the Tribunal dismisses the application but draws to the parties' attention our comments.

BACKGROUND

1. At the beginning of 2023 the Applicants, the leaseholder owned freeholder, applied to the tribunal for, in essence, approval of the plans and costs for the undertaking of major works to the Property.

2. The directions set out the circumstances leading to the application as follows:

   "(1) The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable, and whether the sum of £21,000 per leaseholder is reasonable in relation to the following works:

   a. Resurfacing and retiling the roof terrace

   b. Replacement of gravity-fed water tanks

   c. Repairs to the concrete bridge

   d. External repairs to timberwork and redecoration

   e. Replacement of asbestos concrete spandrels

   (2) The company directors have obtained a quotation following surveys, in the total sum of £882,000 (representing a contribution of £21,000 per respondent leaseholder).

   (3) The directors say that it is proposed that the works are funded by setting the service charge for the 2023-24 financial year, with a demand becoming due on 1 April 2023, and with the works being commenced in the summer of 2023.

   (4) The directors also say that a significant proportion of the work is required to address urgently needed repairs, including remedying leaks and safeguarding water supply from the water tanks. Finally they say that carrying out the works at once will reduce the overall costs, for example in the hiring of scaffolding. Further delays will result in an increase in costs due to price inflation."

3 The matter came before us for consideration on 11 April 2023. Mr Price and Mr Phelan represented the Applicant and were accompanied by Ms Lisa Kapper from the managing agents Acorn. No Respondent leaseholder attended.

4 The bundle before us contained surveys relating to the roof terraces by Proteus Waterproofing, dated 10 March 2022, a concrete survey dated April 2021 and a further survey relating to the concrete walkway dated July 2022. APC Surveyors had provided a report on the overview of the works, with budget costings showing a cost of £876,863 if the works were undertaken in one go (Option A). This had then been subdivided it into two (option B) showing costs for works which appeared not to require scaffolding in the sum of £506,903, including all associated costs, and other works for which scaffolding would be required, at the sum of £470,447 This showed a difference of circa £100,000 if the works are undertaken in two phases.

5. A survey of residents had been undertaken and we were provided with the comments those who had responded had made. It appears that 16 leaseholders were in favour of option A, 6 preferred option B, 6 asked for more time and 14 did not respond. We were also provided with queries raised by leaseholders and the replies given and finally a 'skeleton argument' put forward by the Applicant. We have noted all that has been said.

6. An Initial Notice under s20 of the Landlord and Tenant Act (the Act) had been sent to the leaseholders in June 2021.

7. At the hearing we asked why there was no reserve fund and were told that there is some £70,000 to £80,000 held. It was explained to us that there had been a change of directors in 2021 and that there had been no expectation that the works would be required to this level or this cost. It did not seem that there was a planned maintenance programme in place and service charges had remained at the same level for some years. The current managing agents had been appointed in 2019.

8. It was confirmed that enquiries had been undertaken to establish the liability of the leaseholders to the repairs and the Applicant was satisfied that it was right to seek to recover the costs of the proposed works through the service charge regime as provided for in the leases of the flats, a specimen copy of which was included in the bundle before us.

9. We were told that there was a real problem with water ingress, both via the roof terraces and by rotten timber framing the external asbestos panels, which needed to be addressed as soon as possible. We were told that 7 tenders had been sent out but to date only 3 had indicated an intention to provide costings, which would be available later this month. It appears that piece meal repair of the roof terraces might undermine any insurance cover.

10. It seems that to date about half the leaseholders have paid monies demanded of them.

FINDINGS

11. We heard all that was said and reviewed the papers before us. It is difficult to know what we can do assist the Applicant and do justice to the leaseholders. We are faced with an application which seeks reassurance from us that the sums which appear to be suggested will be payable, more than £800,000 which ever option is taken, are reasonable and will be payable.

12. However, we were told that tenders have been submitted to three companies who were prepared to bid but to date no details of the costings are available. In those circumstances it would not be proper to venture an opinion on the overall costs of the project. We appreciate that thought has been given to separating certain aspects and to proceed in what has been termed option B. It may be that further options could be considered. It is not clear to us how pressing the works to the walkway may be and whether other aspects could be postponed enabling the costs to be spread. The parties are encouraged to review the Upper Tribunal decision in Waaaler v The London Borough of Hounslow [2015] UKUT 0017 (LC) subsequently unsuccessfully appealed by the Council. Whilst this case dealt with improvements reference is made to authority pointing to the need to consider the financial status of of the leaseholders. (see para 44 and 45 of the decision).

13 What we feel we can say is that the board of directors of the Applicant company have done all that they could reasonably be required to do to enable the process to be started. It is, in our finding, vital that the s20 procedures are fully adhered to. Once the tenders are received then stage 2 of the process can be undertaken. It does appear clear there is a pressing need for certain of the proposed works and that substantial savings could be made to the overall costs if the works were undertaken as one contract, but the ability of the leaseholders to find the funds for this is relevant, bearing mind that this is a leaseholder owned landlord and we appreciate that this is something that exercised the minds of the board of directors of the Applicant.

14 In the circumstances, and with reluctance, we consider that we must dismiss the application as there is no decision we can give at this stage. Once the tenders have been received and reviewed, the second stage of the s20 process can be undertaken and in due course, a preferred route taken, which the leaseholders will be required to adhere to and to fund, subject to their rights under s27A of the Act.

Judge Dutton 12 April 2023

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.

3. If the application is not made within the 28-day time limit, such application must include a request to 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.