



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

Case reference : **LON/00AY/LDC/2023/0200**

HMCTS code : **P: PAPERREMOTE**

Property : **118 Gauden Road, London, SW4 6LU**

Applicant : **118 Gauden Road Ltd**

Representative : **Dorian Hardacre**

Respondents : **Various Respondents**

Representative : **Not represented**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Sarah McKeown
Ms. R. Kershaw MRICS**

Date of decision : **6 November 2023**

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and has not been objected to by any Respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the Tribunal was referred are in an electronic bundle of 21 pages, the contents of which the Tribunal has noted. The decision made is as set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from statutory consultation in respect of the subject works, namely the removal of compromised plasterwork, dismantling of the ceiling, tanking of walls, waterproofing to the building, repairs to the flat roof and making good.

The Applicant should place a copy of this decision together with an explanation of the leaseholder's appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent place in the common parts of the Property/

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or cost of the work.

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and tenant Act 1985 ("the Act") for retrospective dispensation from consultation in respect of the works set out above, arising from leaks to the flat roof and penetrating damp. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The cost of the work the subject of the application exceed this threshold.
2. By directions dated 10 August 2023 ("the directions") the tribunal directed that the applicant prepare a bundle which was to contain, among other things, a statement from the Applicant/landlord to explain the reasons for the application. The tribunal also directed that the applicant send to each of the leaseholders the application and the tribunal's directions and display the same in the common parts of the Property, confirming to the tribunal that it had done so. The applicant confirmed to the tribunal on 16 August 2023 that it had complied with this direction.

3. The directions required any leaseholder who opposed the application should tell the tribunal. If they opposed the applicant, they should complete the reply form and send it to the Applicant and the Tribunal as well as sending the Applicant a statement responding to the application together with any documents they wished to rely on. The Tribunal has received no completed form.
4. The directions provided that the tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The Applicant's case

5. The applicant is the freeholder landlord of the Property, acting by Mr. Hardacre, who is a Director of the Applicant company, and the leaseholder of Flat A (i.e. 118a Gauden Road). The specimen lease (all building leases are similar), which is for Flat D, states that the freeholder covenants (cl. 5.5.1) to maintain and keep in good and substantial repair and condition, among other things, the "main structure of the Building including... the roof thereof...".
6. In its application, which is dated 21 July 2023 and which was sent to the Tribunal on 24 July 2023, the Applicant explained that works were required to rectify leaks from the flat roof and penetrating damp discovered during the addition of a conservatory to the ground floor Flat A. It is said that leaks to the flat roof had penetrated and compromised plasterwork and the ceiling, which had had to be dismantled, walls tanked and the building waterproofed, the roof was to be fixed and the plasterwork made good. The application states that the leaks/damp was affecting the bedroom in Flat A was inhabitable and the work needed to be completed as soon as possible to avoid worsening of existing damage. Works had started on 6 July 2023. The cost of the works was: labour of £3,600 plus VAT (i.e. £4,320) and materials of £1,340.
7. All the leaseholders were informed of the works, with a description of the works, costings from the builder and photographic record of the problems. Within the bundle provided, there is an email dated 6 July 2023, sent to the leaseholders, which confirms, among other things, that the builder had removed the affected plasterwork to reveal the scale of the problem. The email stated that a quotation obtained from the builder was enclosed. The email concludes by stating that "Alan" from Flat B had been invited to a viewing to act as an independent witness on behalf of the company, which he had done, and that if anyone had any queries or wanted to look at the problem, then they should contact Mr. Hardacre, and he would show them around.

The Respondent's case

8. No respondent objected to the application.

Determination and Reasons

9. Section 20ZA(1) of the Act provides:
“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or 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.”
10. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.
11. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 in reaching its decision.
12. There is no evidence before the Tribunal that the Respondents were prejudiced by the failure of the Applicant to comply with the consultation requirements. The Tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the the subject works, namely the removal of compromised plasterwork, dismantling of the ceiling, tanking of walls, waterproofing to the building, repairs to the flat roof and making good.
13. Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application. This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or costs of the works.

Judge Sarah McKeown
6 November 2023

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