



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

Case Reference : **LON/00BK/LDC/2023/0208**

Applicant : **AG Leinster Square (Jersey)**

Property : **13-19 Leinster Square London W2
4PR**

Respondents : **Various leaseholders of 13-19
Leinster Square**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for a scheme of
Major work**

Tribunal : **Judge Daley**

**Date and venue of
Paper Determination** : **28 November 2023, Paper
determination- determined
remotely**

Date of Decision : **4 December 2023**

DECISION

Decision of the tribunal

- i. The tribunal grants dispensation in respect of the major works relating to resurfacing work of the roof terrace and balconies of four penthouse flats.**
- ii. The Tribunal makes no order for the cost occasioned by the making of the application.**

The application

1. The applicant by an application, received by the Tribunal on 12 June 2023 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 Act¹.
2. The premises which are the subject of the application is a converted mansion block comprising 10 flats and 5 Town Houses.
3. The work for which dispensation is sought were as a result of a water leak to apartment 7, the work required scaffolding and removal of the ballast stones in order to inspect the gutter and replacement of timber and the gutter membrane.

The Background

4. This case concerns the above premises which were converted between 2018-2020. The premises are subject to leases, a sample lease for the premises known as Apartment 5, 16 Leinster Square was provided.
5. On 21 April 2023, following a report of water leaking to apartment 7, the applicant's property manager, Mr Matthew Scott, wrote to the leaseholders by email, informing them of the leak. He informed them that the leak appeared to be caused by a defect to the mansard parapet gutter at the front of the premises.
6. The email informed them of the need to carry out Section 20 of the Landlord and Tenant 1985 , however the email advised that

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

“ Owing to the emergency nature of the works, we intend to instruct immediately and seek dispensation from the First Tier Tribunal (Property Chamber) to dispense with the consultation process. Estimates of two scaffolding companies was attached, and the email stated “ Please note these do not include costs for any repair works that may or may not be required as we are unable to quantify these until we are able to safely access the area in question. The two estimates provided were from Masterfix Property Services in the sum of £8674.00(excluding VAT) and Maintained Limited in the sum of £7080.00 (including VAT).

7. Directions were given in writing on 23.08.2023, setting out the steps to be taken by the Applicant, (including serving the application on the respondents) for the progress of this case. 5. The Directions at paragraph D stated that -: “...The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.”
8. The Directions also provided at paragraph 3 that -: Those leaseholders and sublessees who oppose the application must by 11.10. 2023 -: complete the attached form and send it by email to both the Applicant/Landlord and to the Tribunal; and (ii) Send to the applicant/ landlord a statement in response to the application with a copy of the reply form by email or by post. They should send with their statement copies of any documents upon which they wish to rely...”
9. The Directions also provided that the application would be determined on the basis of written representations in the week commencing 27.11. 2023, and that any request for a hearing should be made by 8.11.2023. No request was made for a hearing, and the Tribunal satisfied itself that the matter was suitable to be dealt with on the papers.
10. The only information provided about the position adopted by the leaseholders was set out in an email dated 24 April 2023, prior to the application being made from Eli Belegu, a barrister from Malins Chambers in which he stated “ The leaseholders have agreed in principle to pay for the scaffolding through the service charge emergency fund, as this situation requires temporary funding. In furtherance, the above is subject to the landlord proposing alternative source of funds to pay for this works, this issue was previously acknowledged by management but not rectified. Please confirm whether Premier has been/ or will be notified as per policy and or the Landlord should be claiming under the building warranty.”
11. The Tribunal noted that the Applicant has complied with the directions and copies of the application were provided to the leaseholders and occupants on 11 September 2023, by email.

The tribunal's decision and reason for the decision

- I. The Tribunal having considered all of the circumstances in this case, it noted that no updating information was provided concerning the contractor who was instructed, the scope of the work and the actual costs which have now been incurred, or the decision concerning the funding.
- II. The Tribunal has considered the commercial lease and the residential lease. The Tribunal noted that its jurisdiction in this matter is somewhat limited and 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. Although the Tribunal does not find that there is any prejudice to the dispensation being granted, The Tribunal would note that the limit in our jurisdiction has meant that although the Tribunal has considered whether the work is within the scope of the repairing covenant in the lease, it is for the landlord to satisfy themselves of this and to determine the proportion payable by the tenant prior to undertaking the work. As nothing in the Tribunal's decision deals with the reasonableness or payability under the lease of the work in issue.
- III. Further the Applicant **shall within 28 days** provide the Respondents with information of the full scope of the work, the provisions within the lease under which the work was carried out and if the work, the full costs of the work and the contribution to the costs of the work to be paid by each leaseholder.
- IV. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
- V. No applications were made for costs before the tribunal.

Judge Daley

Date:
04.12.23

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

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

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) a leasehold valuation 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.]

1. **S2oZA Consultation requirements: supplementary**

- (1) 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.

- (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.
 - (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
 - (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
 - (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the Recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
 - (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
 - (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.