



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

Case reference : **LON/00AN/LDC/2023/0312**

Property : **5 Ongar Road, London, SW6 1RL**

Applicant : **Orchidbase Limited**

Representative : **Michael Richards & Co, Managing Agents**

Respondents : **Mr R Merrylees
Ms D M Chandler
Ms A E Bailey**

Representative : **N/A**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal members : **Tribunal Judge I Mohabir
Mr Antony Parkinson**

Date of decision : **18 March 2024**

DECISION

Introduction

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *retrospective* dispensation with the consultation requirements in respect of remedial roof works required for 5 Ongar Road, London, SW6 1RL (“the property”).
2. The Applicant is the freeholder of the property and the Respondents are the long leaseholders. The property is a mid-terrace house that has been converted into 3 self-contained flats.
3. On 17 September 2020, the Applicant’s managing agent, Michael Richards & Co (“Michael Richards”), commenced the statutory consultation process required by section 20 of the Act by served the Respondents with a Notice of Intention to carry out roof repairs and/or renewal.
4. Michael Richards then obtained two estimates for the proposed works. The first was from AMOliveria Construction in the sum of £5,765. The second was from Pblgroup in the sum of £21,125 plus VAT.
5. On 23 July 2021, Michael Richards served a Notice of Estimates on the Respondents recommending that the roof works be carried out by Pblgroup.
6. However, despite the stated urgent nature of the proposed works, for some unknown reason they were not commenced. Instead, Michael Richards obtained an updated estimate from Pblgroup in the sum of £27,937 plus VAT and an estimate from Insideandout in the sum of £24,566 plus VAT. An amended Notice of Estimates was served on the Respondents on 17 May 2022 with a recommendation that the latter carry out the proposed works.
7. Again, for some unknown reason, the works were not commenced. On 28 October 2022, Michael Richards informed the Respondents that Insideandout were no loner able to undertake the proposed works and advised that Pblgroup do so. Any comments from the Respondents was invited within 7 days. Apparently, none were received and the roof works were completed on 13 December 2022.
8. By an application dated 4 November 2022, Michael Richards made this application on behalf of the Applicant seeking retrospective dispensation from the requirement to carry out statutory in relation to the roof works.
9. On 15 January 2024, the Tribunal issued Directions. The Respondents were directed to respond to the application stating whether they objected to it in any way.
10. None of the Respondents have objected to the application.

Relevant Law

11. This is set out in the Appendix annexed hereto.

Decision

12. As directed, the Tribunal's determination "on the papers" took place on 18 January 2024 and was based solely on the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.
13. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
14. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the fire compartmentation works. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.
15. The Tribunal granted the application for the following reasons:
 - (a) the Tribunal was satisfied that the nature of the roof works were perhaps not as urgent as was stated by Michael Richards. That is not consistent with the approximately two-year delay that was incurred from the serving of the Notice of Intention in September 2020 to the actual works commencing on or about November 2022. The obvious point is that statutory consultation could and perhaps should have taken place during this period of time. However, materially, the Tribunal noted that no point is taken nor any objection raised by any of the Respondents about the delay.
 - (b) the Tribunal was satisfied that the Respondents have been kept informed of the need, scope and estimated cost of the proposed works.
 - (c) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
 - (d) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act and to take any point

about the increased costs that had arisen as a result of the delay in not progressing the roof works for a period of approximately 2 years.

16. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.
17. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I
Mohabir

Date: 18 March 2024

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 (as amended)

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) the appropriate 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.

Section 20ZA

- (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.