



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

**Case Reference** : **LON/00BC/LDC/2023/0087**

**Property** : **1-42, The Shrubbery, Grosvenor Road,  
London E11 2EL**

**Applicant** : **The Shrubbery RTM Company Ltd.**

**Representative** : **Your Home Property Management Ltd.**

**Respondents** : **The leaseholders of 1-42, The  
Shrubbery, Grosvenor Road, London  
E11 2EL**

**Representative** : **Not Represented**

**Type of Application** : **For the determination of an application  
for dispensation from the statutory  
consultation requirements**

**Tribunal Members** : **Tribunal Judge S.J. Walker  
Tribunal Member Mr. A. Fonka MCIEH,  
CEnvH, M.Sc.**

**Date and venue of  
Hearing** : **Decided on the Papers**

**Date of Decision** : **29 June 2023**

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**DECISION**

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**Decision of the Tribunal**

**The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of works to the roof of The Shrubbery, Grosvenor Road, London E11 2EL, including works to make the roofs weatherproof and watertight, repairs to parapet walls, coping stones and water tank housings, repairs to damaged rendering, external redecoration, and electrical works to meet health and safety standards.**

## Reasons

### The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of works to the roof of The Shrubbery, Grosvenor Road, London E11 2EL.
2. The application was made on 31 March 2023. It stated that the application was being made because, although a section 20 process had been commenced in April 2021, the necessary planning application process which was required because the property is listed had resulted in a number of recommendations from the local authority being made. These recommendations resulted in a need to change the original specification of the works which would require another full section 20 consultation. In the meantime, the condition of the roofs has deteriorated. Undertaking another full consultation would delay the works further and, in particular, make it impossible to undertake the works in the drier months of the current year.
3. Directions were made on 10 May 2023. The directions provided that the Applicant was to send a copy of the application and the directions to all the leaseholders by 17 May 2023 and to display a copy of those documents in a prominent place in the common parts of the property. The directions also required the Applicant to e-mail the Tribunal by 22 May 2023 to confirm that those directions had been complied with. An e-mail was sent by the Applicant to the Tribunal on 16 May 2023 to that effect (page 24). The Tribunal is satisfied that adequate notice of the application and how to object to it has been given to the Respondents.
4. The directions provided that those leaseholders who opposed the application were to complete a reply form and return it to the Tribunal by 31 May 2023. Four notices of objection have been received, from the tenants of flats 3, 4, 8 and 13.
5. The directions further provided that the application would be determined on the papers in the week commencing 26 June 2023 unless by 14 June 2023 any party requested a hearing. No such request has been received by the Tribunal – those submitting objections stated that they did not request an oral hearing - and so this determination is made on the papers which have been provided by the parties.
6. The relevant legal provisions are set out in the Appendix to this decision.

7. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The applicant prepared a bundle consisting of 272 pages. It included the notices of objection and the applicant's responses to those objections. References to page numbers throughout this decision are to this bundle.

### **The Background**

9. The property comprises 3 residential blocks of flats laid out in a u-shaped plan. There are 42 flats in total. The blocks are all of 3 storeys and are constructed of red brick. They all have flat roofs. The property is a grade II listed building, the listing of which describes it as being of special interest as an impressive and thoughtful example of an inter-war apartment block development in a modern style.

### **The Lease**

10. No evidence of title was produced. However, no issue has been raised as to the right of the Applicant to make this application.
11. A specimen lease in respect of 22, The Shrubbery was provided with the application. By clause 2(6) of the lease the tenant covenants to pay a rateable proportion of the expenses incurred in repairing and maintaining the building, including the roof.

### **The Issues**

12. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs will be reasonable or payable.

### **The Applicant's Case**

13. The Applicant's case is set out both in the application form at pages 6 to 11 and in their supporting statement at pages 27 to 28. Their case is that repairs are urgently required to the roofs of the three blocks. It is said that the buildings are not watertight and that the living conditions in the top-floor flats pose a risk to health and safety. Recent inspections have found a build-up of black mould growth. In addition, the electrical wiring in several flats has been affected by water ingress which has caused at least one electrical explosion. It is further stated that water ingress has accelerated in 2022/2023 which is causing progressive and serious damage to internal walls, floors, ceilings and carpets.
14. Central to the applicant's case is the argument that works need to be carried out in the drier months. It is anticipated that they will take 16 to 20 weeks and so, ideally, they should not commence any later than July 2023.
15. It is also stated that the electrical wiring is still that of the original building and dates back to the 1930s. Exterior and interior lights do not work. Also, as a result of a power surge in February 2023 the landlord has been issued with an

observation notice and they now need to consider rewiring the property, which is said not to be currently safe for residents. It is argued that these works also need to be carried out in the lighter months.

16. The history of events leading up to the application is stated to be as follows. As a result of a history of neglect by previous managing agents, the roofs of the blocks have been deteriorating over many years. Problems had been ignored and only patch repairs undertaken, and the buildings were no longer watertight. The current managing agents realised that more substantial works were required. A consultation process was started in 2021. Section 20 notices were sent to the leaseholders on 30 April 2021 (page 213). These identified works to repair the roofs, repair damaged render and undertake exterior decoration, and undertake necessary electrical works. No responses were received.
17. Estimates were obtained and notice of these was given to the leaseholders on 17 September 2021. The lowest tender for the roof and external works was £347,573.10 and the lowest for the electrical works was £10,661.76 (page 214). The applicant entered into contracts with the two lowest tenderers and notice of this was sent to the leaseholders on 16 November 2021 (page 216). It was intended to commence works in the spring of 2022.
18. However, the surveyor originally appointed walked away from the project. In addition, approval was required from the local planning authority because of the listed status of the building. The new surveyor prepared a new condition report on the roof in 2022 which showed a deterioration since 2021. As a result of this, and also because of recommendations from the planning authority, the applicant revisited the specification for the roof works.
19. The planning history was as follows. On 3 March 2022 the local authority provided pre-application advice. This required more detailed condition reports and also did not support the use of Ubiflex synthetic material in place of lead (pages 193 to 196). Planning permission for the roof works was not granted until 6 January 2023 (pages 201 to 203) and it was not until 9 May 2023 that a condition requiring approval of materials was discharged (pages 206 to 207).
20. Following the obtaining of a revised specification, three new tenders were obtained for the works. The cheapest new tender for the roof works was for £564,803. A tender report was prepared and this was shared with the leaseholders.
21. The applicant provided copies of correspondence sent to the leaseholders after the contracts were entered into (pages 219 to 226). On 22 April 2022 the applicant wrote to the leaseholders informing them that as a result of recommendations from the planners, changes needed to be made to the specifications of the works. In this correspondence it was stated that it was hoped that the costs could be contained within the existing section 20 figures, but leaseholders were informed that a further consultation may be necessary (page 221). Then on 8 August 2022 the applicant wrote to the leaseholders informing them that it had been necessary to appoint a new surveyor, that it

had been found that the condition had deteriorated, and that a more thorough scheme was required (page 222). On 3 January 2023 the applicant informed the leaseholders of the current situation as regards planning permission and it was stated that it was hoped that works would start in spring 2023. The leaseholders were informed that they would receive communications in advance of works, and they were invited to express concerns and/or ask questions (page 223). Then on 14 April 2023 the applicant informed the leaseholders of this application (page 224).

### **The Respondents' Case**

22. The objections to the application can be summarised as follows;

#### **Flat 3 – Rohini Wahi (pages 254 to 258)**

23. This tenant objected on the grounds that they were not comfortable with the total amount and considered the process was rushed. There was also a complaint about poor communication, with examples given in relation to tree-felling. It was also stated that insufficient options at different price bands had been provided.

24. A further objection was that what was being proposed was not a like-for-like repair but an enhancement.

#### **Flat 4 – Michael Molloy (pages 250 – 253)**

25. This tenant objected on the grounds that the proposed costs had increased and that what was being proposed amounted to an improvement rather than a repair. It was also argued that insufficient consideration had been given to exceptions to building regulations for listed buildings.

#### **Flat 8 – Scott Bartle (pages 244 to 246)**

26. This tenant asserted that the information provided by the applicant was vague because of the pressure to complete works in 2023. It was also stated that the applicant's directors had refused an in-person consultation. Mr. Bartle stated that the proposed cost was excessive and that he did not believe that the best price contractor had been selected.

#### **Flat 13 – Caroline Daly (pages 247 to 249)**

27. This tenant objected to the provision of an enhanced roof, which was not included in the original specification. They asked for a re-tendering because of the increase in the costs. They assert that because the property is a listed building the roof works would be exempt from compliance with building regulations relating to energy efficiency. They also complain that additional insulation would only benefit leaseholders on the top floors.

### **The Applicant's Response**

28. The applicant has provided annotations to the objections setting out their response. In these they explain that a further tendering exercise has taken place and that there was in fact an in-person consultation on 17 April 2023 which Mr. Bartle attended.

29. With regard to the argument that what is being proposed is an enhancement rather than a repair, the applicant responds as follows. What is being proposed is a long-term solution to the ongoing problems with the roof rather than piecemeal repairs. Any “enhancement” arises from the need to comply with building regulations in respect of energy efficiency. With regard to the issue about whether the building regulations apply, their argument is that works to a dwelling must comply with the energy efficiency requirements unless doing so would unacceptably alter the dwelling’s character and appearance. They rely on the local authority’s pre-application planning advice (page 194) and the grant of planning permission to show that the proposals do not unacceptably alter the character of the building and so the energy efficiency requirements must be met.

### **The Tribunal’s Decision**

30. The Tribunal bears in mind the limited scope of the issue before it. The purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. It is, therefore, necessary for those who object to the dispensation to show that they have been prejudiced.
31. Having carefully considered the arguments put forward by the objectors, the Tribunal is not satisfied that any such prejudice has been established. It is clear to the Tribunal that the leaseholders have been kept fully informed of the nature and extent of the proposed initial works, the reasons why the scope of those works has changed, and the nature and scope of the revised works, which have also been put out to tender. It appears to the Tribunal that the applicant has been acting conscientiously and the Tribunal accepts the arguments they have put forward in their application.
32. The Tribunal is satisfied that given the urgency of the works required it is reasonable to dispense with the consultation requirements.

**Name:** Tribunal Judge S.J.  
Walker

**Date:** 29 June 2023

### **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
 and the amount payable shall be limited accordingly.

- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

## **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 the appropriate 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 subject to annulment in pursuance of a resolution of either House of Parliament.