FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LDC/2024/0152**
Property	**:**	**15B Bloom Grove, West Norwood, London SE27 0HZ**
Applicant	**:**	**15 Bloom Grove Ltd**
Representative	**:**	**Dr Karen Findlay**
Respondents	**:**	**Mr Rupert De Guise**
Representative	**:**	**N/A**
Type of application	**:**	**To dispense with the requirement to consult lessees about major works**
Tribunal member	**:**	**Judge H Carr**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**12th August 2024**

DECISION

Decision of the tribunal

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

The application

2. Dr Karen Findlay, on behalf of the freeholder of the building, 15 Bloom Grove Ltd, applied on 5th June 2024 under s.20ZA of the Landlord and Tenant Act 1985, for dispensation from the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

3. The application indicated that the works that were the subject of the dispensation application were urgent works required because of water ingress into the building from the roof and rear dormer window. The water ingress caused sever damage to the property.

4. The cost of the works to the Respondent was £ 1,212.50.

5. In the application it was explained that the reason that dispensation was sought in connection with the works was because the water ingress occurred only three weeks before Christmas, and any delay in carrying out the works would have resulted in more extensive damage.

Procedure

6. The Tribunal held a case management review of this matter on 2nd July 2024 and issued directions on the same date. Those directions incorrectly named the Applicant as Dr Karen Findlay. This Tribunal has amended the name of the Applicant to **15 Bloom Grove Ltd.**

7. In those directions the Tribunal determined that the matter be determined on the basis of the papers provided during the week commencing 12th August 2024.

8. The directions gave an opportunity for the Respondent to request a hearing. No hearing was requested so the matter has proceeded based on the papers provided for the tribunal.

9. The directions also provided an opportunity for the Respondent to provide a statement objecting to the application. The Respondent objected to the application and provided a statement in support.

Determination

The background

10. The property is a Victorian house which has been converted into four flats. Three of the leaseholders own the freehold collectively. The fourth leaseholder, who does not own a share of the freehold, is the Respondent in this application.

11. The chronology of events is as follows:

(i) In early December 2022 water ingress occurred to the building from the roof and rear dormer window area. This water ingress caused severe damage to the interior of the building severely damaging the wall and ceiling of Flat D of the property, the flat owned by Dr Findlay

(ii) Dr Findlay, on behalf of the Applicant, spent a week attempting to find a builder/roofer to provide quotes for repair work which urgently needed to be carried out.

(iii) Because of the proximity to the Christmas holidays most builders were either busy or about to go on holiday. Only two builders responded, and one required the Applicant to pay for scaffolding before giving a quote and then could not do the work until January or February 2024.

(iv) Therefore, only one builder was willing to carry out the urgent work required before Christmas. He provided a quote on 9th December 2022 and carried out the work on 17th December 2022. This was a Saturday, but it was the only date on which the contractor could carry out the work.

(v) The Applicant informed the leaseholder of the damage to the building and the need for urgent repairs and the fact that there was only one builder prepared to do the work on 16th December 2023. There was no reply from the leaseholder until arch 2023. The leaseholder was also informed when the work had been done and a copy of the invoice was sent to him asking him to pay his quarter share.

The Evidence and submissions

12. The Applicant gave evidence before the Tribunal as follows:

(i) The application is for an unconditional retrospective dispensation of part of the consultation requirements prescribed under s.20 of the Landlord and Tenant Act 1985 in relation to the roof works carried out at the property.

(ii) The Applicant submits that it would be reasonable to dispense with the requirement to consult because the Respondent has not suffered any relevant prejudice as a consequence of the Applicant's failure to comply with the requirements. There was only one quote available to the Applicant.

(iii) It submits that if the Applicant had carried out consultation the repair works would have been considerably delayed due to the Christmas holidays. This would have led to more extensive work being required and increased expense to the leaseholder.

13. The Respondent submitted as follows.

(i) The Respondent argues that he has suffered prejudice because of the high cost of the works relative to what they may have cost had he been properly consulted and relative to the actual work itself.

(ii) He submits that there was sufficient time for the Freeholder to have conducted the required consultation.

(iii) He says that he had not heard from the freeholder for several years. However he contacted them by email on 28th November 2022 as he wanted to enquire about a lease extension to aid a potential sale of his flat. One of the directors of the freehold company replied on 1st December 2022 but there was no mention of any impending works to the building. He emailed again on 4th December 2022

(iv) The respondent received a further email dated 16th December 2022 from Dr Findlay. In this email he was informed that 'emergency work' was to be done to the roof. The Respondent says that the work was effectively already committed as the invoice supplied for the work was dated for the following day.

(v) The email of 16th December 2022 says that the other two freeholders had consent to the works. The Respondent submits that this indicates that there was sufficient opportunity for some consultation, but he had not been included in whatever had taken place.

(vi) The Respondent also draws the attention of the Tribunal to the latest statement of fact from the insurance dated 24th May 2024. This indicated that the Freeholder had made a claim on 1st November 2022 for a leak from the roof and a Dorma window. He assumes that this is for the same damage as the invoice for urgent works to the roof. This claim was made a few weeks prior to the initial email from the Respondent to the Freeholder on 28th November 2022 and six week before the invoice date and certainly some time prior to Christmas. He argues this shows there was ample opportunity for the Freeholder to have consulted with me or at least to have notified me of impending works. He suggests that they deliberately chose not to do so.

The Applicant's response

14. One of the Directors of the Applicant, Ms Doran responded to an email from the Respondent about the lease extension. When she sent to the response on 1st December she did not know about the damage to Flat D.

15. The Applicant says that Dr Findlay only had one week to consult with her fellow directors about the work. One of those lives on the premises. She did not have the Respondent's telephone number and she was without access to a computer until she returned home. As soon as she returned home she emailed the Respondent.

16. She was without computer access because, following her visit to the property on 1st December 2022 and noting the damage she decided to remain at the property. in Flat D. to do the work of attempting to find a builder to carry out the works.

17. Dr Findlay says that not only was it not possible to conduct 30 days of consultation, it also would have made not any difference as there was only one builder able and willing to carry out the urgent repairs.

18. She states there was no alternative available to the Applicant and that the Respondent suffered no prejudice.

19. The Applicant explains that the insurance information relates to a claim made on 24th September 2024 concerning the repairs to the internal decoration of Flat D. The disrepair was as a consequence of the water ingress of in winter 2022. When the claim was made Dr Findlay was not able to say exactly when the damage had been caused. She said that she could only say it was sometime in November 2022. This was incorrectly transferred onto the Statement of Fact as the incident occurred on 1st November 2022. The claim was for £768 and was merely for redecoration costs.

20. The Freeholder restates that it was unaware of the damage until 1st December 2022.

The Law

21. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs (1) 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 agreements, the tribunal may make the determination **if satisfied that it is reasonable to dispense with the requirements'** (emphasis added).

22. The Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14 (Daejan) is the leading authority on how the statutory provisions are to be interpreted.

The tribunal's decision

23. The tribunal determines to grant the application.

Reasons for the tribunal's decision

24. The tribunal had some concerns about the application. There appears to have been a breakdown of communication between the Respondent and the Applicant. The Respondent is urged to provide his full contact details to the Applicant to avoid issues like this in the future.

25. Whilst the Respondent evidence may go to the question of the reasonableness of the cost of the works, the evidence provided to the tribunal does not discharge the burden of demonstrating relevant prejudice. There is an assertion of prejudice but no evidence at all provided by the Respondents relating to costs incurred as a result of the

failure to consult. Such evidence would have to include evidence of what the costs might have been had the consultation occurred. This would have to include some indication of the costs of repairing any damage due to water ingress during the period of consultation. This is necessary, as Lord Neuberger made clear in *Daejan*, 'the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants'.

26. The tribunal agrees with the submissions of the Applicant that real prejudice referred to by Lord Neuberger is financial prejudice.

27. The Tribunal therefore determines that it is reasonable to grant the application sought.

28. Both parties should note that this determination does not concern the issue of whether the service charge costs demanded in connection with the works are reasonable or indeed payable. The Respondent is able, if it appears to him to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.

Name: Judge Carr **Date:** 12th August 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 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 27A

(1) An application may be made to the appropriate 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 the appropriate 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) 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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).