



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

Case Reference : **CAM/00KG/LDC/2024/0035**

Property : **57-79 Porter Close,
Grays, Essex, RM20 4AS**

Applicant : **St. Clements Walk Block
Management Company Ltd**

Representative : **Griffin Residential Block
Management (Managing Agent)**

Respondents : **Leaseholders who may be liable to
contribute towards the relevant
costs at the Property**

Representative : **None**

Landlord :

Type of Application : **S20ZA of the Landlord and Tenant
Act 1985 - dispensation of
consultation requirements**

Tribunal : **N. Martindale FRICS**

Hearing Centre : **Cambridge County Court, 197 East
Road, Cambridge CB1 1BA**

Date of Decision : **22 August 2024**

DECISION

Decision

1. The Tribunal grants dispensation from the requirements on the applicant to consult all leaseholders under S.20ZA of the Landlord and Tenant Act 1985, in respect of the qualifying works referred to.
2. At the date of application it was stated that work had not been and yet that it also been started. It was understood that the management company's agent was able to recharge costs under the service charge provisions to all leaseholders in the Property.

Background

3. The landlord applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
4. The application related to the commissioning of works at the Property which appeared to concern urgent works to apparently overgrown trees on land within the estate, adjacent to neighbouring a live operational railway.

Directions

5. Directions dated 15 July 2024 were issued by Regional Judge Wayte of the Tribunal, without an oral hearing. They provided for the Tribunal to determine the application on or after 19 August 2024, unless a party applied on or before 9 August 2024 for a hearing. No request was received by the Tribunal.
6. The applicant, was to send to each of the leaseholders of the dwellings at the Property; a copy of the application form, brief description of the works, an estimate of the costs of the works including any professional fees and VAT and anything else relied upon and the Directions.
7. The applicant was to file with the Tribunal a letter by 26 July 2024, confirming how and when it had been done.
8. Leaseholders who objected to the application were to send a reply form and statement to the Tribunal and applicant, by 9 August 2024. The applicant was to prepare a bundle of documents including the application form, Directions, sample lease and all other documents on which they wanted to rely; all responses from leaseholders, a certificate of compliance referred to above; with 2 copies to the Tribunal and one to each respondent leaseholder and do so by 13 August 2024.

9. In the event, the Tribunal did not receive any requests for a hearing, nor did it receive any forms in support of or objection to respondents either directly or indirectly via the bundle.
10. The Tribunal determined the case on the bundle received from the applicant, only.

Applicant's Case

11. The application, dated 7 June 2024, at box 4 appears to confirm that the Property is a purpose built block of 21 flats, laid out on a number of floor levels.
12. The application at box 7 confirms that these are to be qualifying works, and that they had not been started, yet confusingly confirms that they had been started as well. At box 9 the applicant was content for paper determination and applied for it, at box 10, to be dealt with by Fast Track, and did claim it was urgent because as stated: *"We have been contacted by the national rail – copy of letter attached. There are numerous trees on our boundary adjacent to the railway and due to the proximity and height of these trees there is a concern and risk of the branches of the trees falling onto the railway and causing substantial damage which can impact the safe running of the trains causing costly delays to the services. There are also further concerns in relation to the safety of the railway and its users."*
13. The application at 'Grounds for seeking dispensation', box 1. stated in addition: *"We have served a notice of intention to leaseholders, in which a copy is also attached allowing 21 days to raise any observations they may have or put forward suggested contractors..."* And: *"There has been an incident recently also with a fallen tree in a surrounding area which has resulted in railway disruptions and incurred thousands of pounds to the land owners."*
14. The application at box 2. below this, described the consultation that had been carried out or is proposed to be carried out. In addition to comments in box 1: *"Once the notice has expired and quotes have been obtained, we will serve a notice of estimates, giving 7 days for any other observations that the respondents may wish to raise."*
15. The application at box 3. explained why they sought dispensation of all or any of the consultation requirements. *"We are applying for dispensation in order to be able to carry out these works as soon as possible, to mitigate the current risks which are imposed by these trees. We have been advised by national rail that these works should be completed as*

soon as possible as currently the trees are a cause for concern and the dates they have proposed for which they are able to isolate the tracks for the works to be carried out is soon approaching.”

16. The applicant included further documents:
17. 1. Quotation No. RS24-0465 of 5/6/24 from Railscape Ltd. For “Tree Works at Porter Close RM20 4AS”. Works totalled £17,116.00 ex VAT.
18. 2. Quotation No. 7805 from Arbor Division Ltd. For “Poplars @ Porter Closer RM20 4AS”. Works totalled £20,400 ex VAT.
19. 3. Notice of Estimates from Griffin Block Management Ltd. “Urgent Tree works”. It included a part break down of works described at *“1. it is the intention ... to carry out works to the trees and branches which overhang the boundary line of the railway, in respect of we are required to consult Leaseholders/ Shared Owners. 2. The works to be carried out under the agreement are as follows: To Remove down to the ground level several poplar trees and an elder tree and to chemically treat stumps.”* The document summarises the tender figures for Arbor at £8,932 in total and Railscape at £13,868.80. These each include a base tender sum, plus VAT, a contingency of £2000 and a management fee at 10%.
20. The Tribunal concludes from this third item that whilst the preparatory specifying and pricing of the job is complete, the commissioning of works is about to commence.

Respondent’s Case

21. The Tribunal did not receive any objections or other representations from the leaseholders, either through the applicant, or directly from them.

The Law

22. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord’s costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

23. Dispensation is dealt with by S.20 ZA of the Act which 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.”

24. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants’ association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord’s reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord’s estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the

landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Decision

25. The scheme of the provisions is designed to protect the interests of leaseholders and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
26. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors where there is no public procurement.
27. The correspondence showed that the applicant complied generally with Directions.
28. The terms of this dispensation from the requirements of Section 20, are:
29. That this only covers the work set out in document 3 referenced above: The Notice of Estimates from Griffin Block Management Ltd. "*Urgent Tree works*". No dispensation for any prior report, nor ancillary work save for the potential for a "*management fee*" to be charged as it was referenced. This in turn is subject to subsequent challenge by any respondent leaseholder, both of the item itself and/or the amount reasonably payable, in the usual way. Other than this no other items are included given dispensation because they were not specifically sought. Those costs will be subject to the annual cap of £250 per leaseholder for a contract for works rechargeable under a service charge.
30. This dispensation does not extend to any other works at the Property. This is because they do not form part of this application.

31. The applicant will meet all of its costs arising from the making and determination of this application. However these costs can be recovered from any leaseholder as service charge and/ or as an administrative charge if the lease of each unit allows for it.
- 32. In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act; in this case, on terms.**

N Martindale FRICS

22 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 either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on any point of law arising from this Decision.

Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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).