



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

Case reference : **LON/00BD/LDC/2024/0015**

HMCTS code
(paper, video,
audio) : **Face to Face hearing**

Property : **Blocks A & B Marina Place, Hampton
Wick, Kingston Upon Thames KT1 4BH**

Applicant : **Marina Place Limited**

Representative : **Mr Arran Southern**

Respondent : **All leaseholders at Blocks A & B Marina
Place, Hampton Wick, Kingston Upon
Thames KT1 4BH**

Representative : **N/A**

Type of application : **Dispensation from consultation
requirements**

Tribunal members : **Judge H Carr
Mr Richard Waterhouse**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **1st July 2024**

DECISION

Decision of the tribunal

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

1. On 27th December 2023 Mr Arran Southern, on behalf of the Applicant landlord, issued an application for dispensation from the statutory consultation requirements in respect of works to carry out fire-stopping within the residential blocks storage cupboards in order to comply with the observations listed within the London Fire Brigade's enforcement notice.
2. The property comprises 2 purpose built residential blocks consisting of 6 cores. Block A comprises Core 1 – flats 18 -25, Core 2. Flats 26 – 34 and Core 3 Flats 35 -41. Block B comprises Core 1 – Flats 44-45, Core 2 Flats 47 – 52 and Core 3 – Flats 53 - 58
3. The cost of the works, which have already been completed is £13,728 plus VAT.

The Hearing

4. Directions in this application were made on 9th February 2024. The directions indicated that the matter would be heard on the papers based on written representations received. However, the directions also indicated that any party may make a request to the tribunal that a hearing be held.
5. Mr and Mrs Job, leaseholders of 37 Marina Place, requested that a hearing be held.
6. That hearing was listed for 1st July 2024.

The application for an adjournment

7. Mr Job applied for an adjournment of the hearing on the grounds that he needed to attend a medical appointment with his wife on that date. The application was made by email on 24th June 2024 and considered by Judge N Carr, a regional judge at the Tribunal on 27th June 2024.
8. She refused the adjournment for the following reasons.
 - (i) The application was not made by form Order 1 as required by the directions of 9th February 2024 (paragraph 10)
 - (ii) The content is not supported by any evidence of the appointment, or the need for Mr Job to be at it, nor the time of day it is happening, nor any explanation as to why the appointment could not have been made

on any other day of the week, given that the date for the hearing was fixed two months ago.

- (iii) The request was not copied to the Applicant and the case officer's reasonable requests that the application be made by form order 1 or even that it be sent to the Applicant were refused by Mr Job who threatened to contact the case officer's line manager.

9. Judge N Carr explained that the delay in considering the application for an adjournment was caused by the refusal of Mr Job to copy the application to the Applicant as well as a failure to provide medical evidence.
10. The refusal of the adjournment was sent to Mr Job on 27th June 2024.
11. The tribunal reconsidered the application for an adjournment at the commencement of the hearing on 1st July 2024. It considered an email sent on 27th June 2024 at 18.10 from Mr Job which was sent in response to Judge N Carr's email of the same date.
12. Mr Job said that the email of 24th June 2024 explained his wife's NHS diagnosis and that she had only just got out of bed late that afternoon to have some fresh air. He said that neither he nor his wife would be physically able to sit or stand for 2 hours or anything like that. It also explained that he wife has serious physical problems and is exhausted and that he has to be with her as they only have each other to care for.
13. He said that he needed to call into the GP surgery to obtain a sick note on Monday 1st July 2024.
14. Mr Job further said that he could not fill out Order 1 to any capacity.

The tribunal decision

15. The tribunal determines to refuse the application for an adjournment.

The reasons for the tribunal's decision

16. The hearing was requested by Mr and Mrs Job. The tribunal notes that no statement has been provided to the tribunal by Mr and Mrs Job as required by the directions.

17. No medical evidence has been supplied by Mr Job, in support of the application, nor any indication of when Mr and Mrs Job may be able to attend a hearing.
18. The matter is straightforward, and the tribunal will take into account when reaching its decision, the very limited information that Mr and Mrs Job have previously provided.
19. No other leaseholder has objected to the application.
20. As the decision will make clear Mr and Mrs Job will still have available to them a route of challenge, via s.27A of the Landlord and Tenant Act 1985, if they wish to object to the payability and/or reasonableness of any service charges that are demanded in connection with the works.
21. The tribunal also bears in mind the overriding objective and the requirement for proportionality and timeliness in dealing with applications before it. The application has been outstanding for some time and requires determination.

Determination of the 20ZA application

The Evidence

1. The evidence before the Tribunal indicates as follows:
 - (i) The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 for the following reasons:
 - (a) The London Fire Brigade have issued extension of enforcement notice, due to expire on 3rd January 2024. Failure to comply and complete the works in the extended notice will result in financial penalties, and/or imprisonment for the responsible person.
 - (b) The Applicant provided a copy of the Enforcement Notice. The required works are works to carry out fire-stopping within the residential blocks and to provide proper fire precautions within service cupboards.
 - (c) Notice of intention was served as an initial step in the consultation of leaseholders. The notice of intention included a statement explaining

that due to the deadline of 3rd January 2024 works had already been instructed.

- (d) Failure to comply with the deadline can result in unlimited fines/imprisonment for the responsible person. It is therefore important to avoid prosecution.
 - (e) The Applicant has confirmed that the only objection to the application for dispensation was received from Mr and Mrs Job. No other contractors were nominated by the leaseholders.
- (ii) Mr and Mr Job objected to the application for dispensation for the following reasons, taken from their email of January 23rd 2024.
- (a) They said that the two 'fire door keep locked' cupboards in the inner foyer immediately adjoin their main bedroom which they say is an unacceptable fire risk which has existed since 2004 . The Gaughan's workman confirmed to them that there is only a thin stud wall between the cupboard and their bedroom.
 - (b) They say that the apparatus inside the cupboard belongs to the landlord exclusively. When the water pipes and electric cables enter any flats, they are only then the responsibility of the leasehold.
 - (c) They argue that it is incorrect that the extra work that the Applicant is alleging needs to be carried out by a section 20 notice.

The Law

2. 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).

The tribunal's decision

3. The tribunal determines to grant the application.

Reasons for the tribunal's decision

4. In the light of the evidence provided to the tribunal and in particular, the need of the Applicant to comply with the enforcement notice from the London Fire Brigade, the works were clearly urgent and necessary.
5. The objections of Mr and Mrs Job do not impact upon the exercise of the discretion by the tribunal. They do not demonstrate any prejudice caused by the failure to consult. They appear to agree that the service cupboards pose a fire risk and therefore that the works are necessary. They suggest that they should not be the subject matter of consultation presumably because they consider that the Applicant should be paying for these works rather than demanding costs via service charges to the leaseholders. That matter raises a question of payability which is a matter that can be considered via an application under s.27A of the Landlord and Tenant Act 1985 as explained below. The tribunal in this application is only concerned with the requirement to consult.
6. **This determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. In particular it does not determine the issue raised by the Mr and Mrs Job in their email of 23rd January 2023. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.**

Name: Judge H Carr

Date: 9th July 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).

(1)