



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

**Case References:** LON/00AP/LDC/2023/0147  
LON/00AP/LSC/2023/0176

**Property:** 38 Avenue Road London N6 5DW

**Applicant:** Mr P Frydas

**Representative :** In person

**Respondents:** Mr and Mrs Papakyriacou (Flat 9)

**Type of Applications:** To dispense with the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985 (the '1985 Act'), and  
Application for a determination of reasonableness of service charge under s27A of the 1985 Act

**Tribunal members:** Judge Pittaway  
Mrs A Flynn MRICS

**Date and venue of Hearing** 5 December 2023  
10 Alfred Place WC1E 7EB

**Date of decision:** 11 December 2023

## DECISIONS

1. **The Tribunal grants the application for dispensation from statutory consultation in respect of the subject works ('the works'), namely the replacement of the roof and associated works.**
2. **The Tribunal finds the cost of the works to be reasonable.**
3. **The Tribunal makes an order under section 20C of the 1985 Act, so that the Applicant may not pass any of his costs incurred in connection with the proceedings before the Tribunal through the service charge.**
4. **The Tribunal does not order the Respondents to refund the fees paid by the Applicant in respect of the s20ZA application and the Hearing**
5. **The Tribunal orders the Respondents to refund the fee of £100 paid by the Applicant in respect of the s27A application**

### The Applications

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (the '**1985 Act**') for retrospective dispensation from consultation in respect of the works to the Property, namely the installation of scaffolding around the Property, stripping off existing slates, battens and felt, fitting a new breathable membrane, treating battens, installing new tiles, fitting new rock wool insulation, removing old lead flashing, installing code 4 lead, installing ridge tiles as necessary, covering existing fascia board with black plastic boards, replacing gutters with deep flow and all down pipes and repairing and cleaning the small roof at the rear of the Property (the '**Works**'). The Works were carried out in 2022.
2. The Applicant also seeks a determination of reasonableness of service charge under s27A of the 1985 Act in respect of the cost of the Works.
3. The Invoice for the Works in the bundle before the Tribunal was £25,800. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if it is planned to carry out qualifying works which would result in the contribution of any tenant being more than £250.
4. By directions dated 14 July 2023 (the '**directions**') the Tribunal directed that the applications Ref LON/00AP/LDC/2023/0147 and Ref LON/00AP/LSC/2023/0196 be heard together.

5. The Tribunal directed that by 1 August 2023 the Applicant send Mr Papakyriacou send all relevant estimates and demands for payment, that by 5 September Mr Papakyriacou complete a schedule as to the item in dispute, why it was disputed and the amount he would pay for the works, and a statement setting out any legal submissions in support of the challenge of the service charge claimed and his objection to dispensation from consultation. The Tribunal directed that by 3 October the Applicant comment on the issues raised in the tenant's schedule, send copies of all relevant invoices and a statement setting out further submissions in relation to the challenge to the service charge claimed and the service charge dispensation.
6. The Applications name only Mr Papakyriacou as Respondent. The Tribunal was informed that both Mr and Mrs Papakyriacou are the lessees of Flat 9, and Mrs Papakyriacou queried why she was not a party to the applications.
7. The Tribunal **directs** pursuant to its power in Rule 10(1) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**') that Mrs Papakyriacou be joined as a Respondent to the applications.

### **The Hearing**

8. The parties appeared in person.
9. The Tribunal had before it at the start of the Hearing a bundle of 82 pages and two separate pages of photographs. The Respondents advised the Tribunal that they had prepared and submitted their own bundle, which contained certain additional e mails. The Applicant confirmed that he had seen this bundle. The Tribunal was not able to locate this immediately. It was agreed that should it be necessary to refer to this bundle during the course of the Hearing the Tribunal would be handed hard copies of the relevant pages. This did not prove necessary.
10. The Tribunal heard evidence and submissions from Mr Frydas and Mr and Mrs Papakyriacou.

### **The Applicant's case**

11. Mr Frydas stated that the Property is a residential building converted into ten flats, nine of which were owned by him at the time of the Works and Flat 9 of which the Respondents are the lessees. Flat 9 is a basement flat. Its lease provides for the lessees to pay 20% of all service charges.

12. Mr Frydas gave evidence that on 20 October 2022 Mr Papakyriacou reported a leak to Flat 9. At the same time two of the flats he owned at the top of the Property reported leaks. This was during a period of extensive rainfall. In his application Mr Frydas stated that part of the roof of one of his flats had collapsed. At that time there were already contractors on site carrying out refurbishment work to the common parts and they were asked to identify the problem, which they put down to want of repair of the roof.
13. Over 21 and 22 October 2023 Mr Frydas obtained four estimates from roofing contractors, all of whom agreed that the roof was beyond repair and required replacement if it was to enjoy the benefit of a warranty. All the estimates contemplated the requirement for scaffolding.
14. Mr Christakis Frydas, the Applicant's father, e mailed Mr Papakyriacou on 21 October to advise him that the roof was beyond economic repair and that the intention was to start dealing with it before there was further damage, and that it was something that could not be delayed. Mr Papakyriacou responded on the same day by e mail saying that he did not understand how water was penetrating a basement flat due to a roof problem but that if the roof needed changing there should be proper roof estimates obtained and at least a ten year guarantee.
15. Mr Frydas obtained a letter from an architect, Chris Georgiou of CG Architects, dated 24 October, which stated that in his opinion the slates should be replaced, including new breather felt and softwood battens, and that the flashings, soffits, fascia boards and all rainwater goods should also be replaced.
16. Mr Frydas submitted that emergency repairs were required to stop the leaks. He awarded the contract to PK House Renovation Ltd who was the contractor already on site and able to commence the works immediately.
17. Mr Frydas stated that P K House Renovation Limited had been chosen because one of the individuals behind that company had been recommended to his family and he was known to have been working for a considerable period of time.
18. Mr Frydas stated that at the time the Works were carried out there had been no intention to sell the freehold, although it had subsequently been sold.

### **The Respondents' case**

19. In his witness statement Mr Papakyriacou stated that he and his wife are the lessees of Flat 9 under a lease dated 4 May 2010. He confirmed that the lease provides for a 'Maintenance Rent' of 20% of the Lessor's costs of maintenance and insurance. Throughout their ownership they have let Flat 9.

20. Mr Papakyriacou gave evidence that there had been a series of leaks into Flat from July 2019, which had been put down to a leaking internal pipe, which on each occasion he had been told by Mr Christakis Frydas had been rectified. On 20 October 2022 Mr Papkyriacou was advised by a new tenant of a leak in the same place as the other leaks had occurred.
21. Mr Papkyriacou confirms the e mail exchange with Mr Christakis Frydas that the leak was caused by the roof. He submits that the e mail did not state that the work was urgent. He submits that his request for a ten year guarantee for the work was intended to refer to a guarantee backed by insurance, even if this had resulted in the costs of the works being greater.
22. Mr Papakyriacou submits that if he had known that the works were genuinely urgent he would not have insisted upon a full s20 consultation and would have accepted a very short consultation period, that would have enabled him to look at the estimates and the strength of any guarantee offered, but that he was given no opportunity to do this.
23. Mr Papakyriacou expressed his concern at the lack of information available as to the strength of the guarantee issued. P K House Renovation Limited is not registered for VAT, which suggests it is not a substantial contractor. The guarantee is referred to in one line at the bottom of the P K House Renovation Limited invoice of 13 December 2022, which he received on 19 December, together with the other three estimates.
24. Mr Papakyriacou was advised on 11 July 2023 that the Applicant had sold the freehold interest in the Property on 17 April 2023. He has not been advised of the identity of the new freeholder, nor whether the guarantee had been assigned to him/it.
25. Mrs Papakyriacou reinforced the concerns expressed by her husband. She confirmed that the Respondents accepted their liability to pay for the repair of the roof under the terms of their lease. Mrs Papakyriacou submitted that the Respondents were not contesting the reasonableness of the amount charged, but whether it would have been more appropriate to proceed with a higher estimate if it had given a better guarantee.
26. Mr and Mrs Papakyriacou confirmed that since the works had been carried out there had been no further leaks into Flat 9.

## Determination and Reasons

27. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence.
28. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
29. The tribunal has made determinations on the various issues as follows.

### The application under s20ZA

30. Section 20ZA(1) of the Act 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.”*
31. The purpose of section 20ZA is to permit dispensation with the consultation requirements of section 20 of the Act if the Tribunal is satisfied that it is reasonable for them to be dispensed with.
32. In reaching its decision the Tribunal has considered the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14, (***Daejan***) to which it referred the parties at the start of the Hearing. It has also had regard to the application and the documents provided, in particular the stated need for the Works and that the Respondents did not object to the Works themselves or that the cost of the Works was too high.
33. At paragraph 67 of the decision in *Daejan* Lord Neuberger referred to a point made by Lord Sumption,  
*‘if the tenants show that, because of the landlord’s non-compliance with the Requirements, they were unable to make a reasonable point which, if adopted, would have been likely to reduce the costs of the works or to have resulted in some other advantage, the LVT would be likely to proceed on the assumption that the point would have been accepted by the landlord’*

34. The estimates from the three contractors who were not awarded the contract are in the bundle, as is the invoice for the completed work from PK House Renovation Ltd in the sum of £25,800. This sum is less than the estimates of the other three contractors.
35. Accordingly the Tribunal finds that the landlord's non-compliance would not have resulted in a reduction in the costs of the Works.
36. From the evidence it has heard the Tribunal finds that it is not the cost of the works to which the Respondents objected but rather the absence of the type of the guarantee they were requesting. The absence of the guarantee might be an advantage such as referred to in Daejan.
37. However on the evidence before it the Tribunal finds that the Applicant had regard to the Respondents' desire for a guarantee, even if he has not provided evidence that it is the type of guarantee they were seeking. There is no evidence before the Tribunal that if the s20 consultation process had been fully undertaken the form of guarantee requested by the Respondents would have been available. Nor have there been any submissions to the Tribunal that a guarantee in the form desired by the Respondents is a requirement under the terms of the lease.
38. Clause 3(a) (ii) of the Lease requires the landlord to obtain the lessees' consent (not to be unreasonably withheld or delayed) to works costing more than £500, '*other than works required as an emergency*'. It may be that if the works were not required as an emergency the lessees might have been able to make it a condition of their consent that a guarantee in the form they wished be obtained, but there is no evidence before the Tribunal that such a form of guarantee would have been available. The Respondents have not provided any alternative estimates or evidence that a guarantee such as they were seeking would have been available.
39. The Tribunal finds that, given that three flats were suffering from damage caused by the leaking roof and the climactic conditions were such that it was likely that the position would deteriorate the works were required as an emergency. In the circumstances of the works being required urgently the Respondents' consent was not required.
40. The Tribunal determines that the Respondents are not prejudiced by the Works and it is reasonable to dispense with the consultation requirements.

## **The application under s27A**

41. The Respondents have not challenged their liability to pay for the cost of the Works, nor have they submitted that the cost was unreasonable. Rather they have submitted that they would have paid more to obtain a guarantee in a form acceptable to them.
42. The Tribunal therefore find the cost of the Works to have been reasonable.
43. Paragraph 1(i) of the Second Schedule of the Lease requires the Landlord to maintain and keep in good and substantial repair and condition *‘the main structure of the Property including the foundations and the roof thereof with its gutters and rain water pipes and windows and window frames.’* There is no requirement that the Landlord obtain a guarantee for the works. It would appear that the Applicant sought to obtain one here and it has apparently been given by the contractor although the terms of the guarantee are not before the Tribunal.
44. It is unfortunate that the Applicant has not obtained a copy of the guarantee offered by the contractor. Its absence is not a matter which affects the Tribunal’s decision in this s27A applications but the reasonableness of the cost of future repair to the roof may depend upon the ability of the landlord to provide a copy of the guarantee in the future and to show that it is still enforceable.

## **S20c costs**

45. While not raised at the Hearing the Directions identify that the issues to be determined include whether an order should be made under s20C of the 1985 Act that the costs incurred by the landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by a tenant. The landlord was not represented at the hearing and the Tribunal is not aware that he incurred any costs in connection with the proceedings but for the avoidance of doubt the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of his costs incurred in connection with the proceedings before the Tribunal through the service charge.

## **Fees and interest**

46. The application under s27A of the 1985 Act also asked the Tribunal to refund the costs of making the applications of £400 and interest of £200.



47. The Tribunal does not order the Respondents to refund the fees paid by the Applicant in respect of the s20ZA application and the Hearing as the Applicant was required to make that application by reason of not having consulted the Respondents before undertaking the Works.
48. The Tribunal orders the Respondents to refund the fee of £100 paid by the Applicant in respect of the s27A application.
49. At the hearing the Tribunal explained to the Applicant that it did not have jurisdiction to award the interest that he was seeking

Name: Judge Pittaway Date: 11 December 2023

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

1. 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.
2. 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.
3. 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.
4. 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.