

**(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/OOAW/LDC/2015/0018

**Property** : 100 Finborough Road, London SW10 9ED

**Applicant** : Mr L Benzoni (landlord)

**Representative** : Not applicable as there was no hearing. The landlord has appointed Farrar Property Management as his managing agents

**Respondent** : Mrs C Maddox (leaseholder)

**Representative** : None

**Type of Application** : Application under section 20ZA of the Landlord and Tenant Act 1985 to determine whether the consultation requirements in relation to qualifying works should be dispensed with.

**Tribunal Member** : Professor James Driscoll (Judge)

**Date of Hearing** : The tribunal considered the application on the basis of the papers filed on 9 April 2015

**Date of Decision** : 9 April 2015

<b>DECISION</b>
-----------------

### **The Decision summarised**

1. The tribunal determines that the statutory consultation requirements should be dispensed with.

### **The application**

2. This is an application under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the statutory requirement to carry out a consultation before undertaking qualifying works. The consultation requirements are those required by section 20 of the Act and in the regulations made under that provision.
3. The applicant is the landlord of the premises which is described as a property which has been converted into five flats. The respondents to the application is the leaseholder of flat 1 and the joint leaseholders of flat A which is a basement flat. The landlord owns the freehold of the building and flats 2, 3 and 4. He has appointed Farrar Property Management to manage the premises.
4. In an application to the tribunal dated 9 February 2015 the landlord stated that on 27 October (I assume in 2014) that his appointed contractors were carrying out works to a party wall. In the course of these works they discovered a problem with the roof to the premises where the asphalt had slumped with the danger that this could cause a leak to the flat underneath. As there was already scaffolding in place for the party wall works, it was decided that it would be cost effective to carry out the necessary works at a cost of £4,600 exclusive of VAT. This bill would be paid out of a reserve fund.
5. Another factor is that a leak had been identified to the ceiling of that flat. In these circumstances the landlord decided to have the works carried out without first undertaking a full statutory consultation. He now seeks a dispensation with these statutory requirements.

6. Directions were given on 17 February 2015. The tribunal wrote to the leaseholders of flat A and flat 1 with a form asking various questions including whether they supported the application and if they were content with a determination made without a formal hearing.
7. We received a reply from the leaseholder of flat A supporting the application and agreeing that it should be considered without an oral hearing. Mrs Maddox, the leaseholder of flat 1 replied stating that she disagreed with the application. She indicated that she did not want an oral hearing.
8. She wrote in her reply (dated 23 February 2015) 'I disagree with the application because the landlord of the building also owns half of the flats at the property and can decide such matters without consulting other leaseholders as he will already be aware of his capacity as landlord'.
9. I note from the bundle of documents that the managing agents wrote to the leaseholders explaining why they were seeking dispensation on 27 February 2015.

### **The determination**

10. The sole issue is whether or not the consultation requirements should be dispensed with. The general approach was decided by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC where it was decided that the general approach is to consider what prejudice is caused to the leaseholders. This tribunal should as a rule grant dispensation and if there is any possible loss to the leaseholders the tribunal should make it a term of the order dispensing with the statutory requirements that appropriate compensation should be paid. In some cases the landlord can be required to pay the costs of the leaseholders who may have sought advice.
11. Turning to the facts of this application I note that the additional works carried out in October 2014 were supported by Mr M Barnsley a building surveyor employed Carlton Service who advised the managing agents. I have also considered the contents of a bundle of documents prepared by the managing agents which included several photographs of the building, estimates and other relevant documents.
12. The only objection to the application is made by Mrs Maddox. However, she does not appear to dispute that the works needed to be carried out or that it was cost-effective to do so as scaffolding was already erected in connection with works to a party wall with an adjoining property. It is hard to see what possible prejudice she has

## **Appendix of the relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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
- 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.
- 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 a Leasehold valuation 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 a Leasehold valuation 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.

But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **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 leasehold valuation 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 a leasehold valuation tribunal;
- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.
- 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.