

10704



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

Case Reference : LON/00BA/LDC/2015/0002

Property : 26 Pelham Road, London SW19
1SX

Applicants : Southern Land Securities Limited

Respondents : The leaseholders as per the
schedule attached to the
application

Type of Application : Application under section 20ZA to
dispense with consultation
requirements for a scheme of
Major work

Tribunal Members : Judge Daley

**Date and venue of
Paper Determination** : 20 March 2015 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 20/03/2015

DECISION

Decision of the tribunal

1. The tribunal grants retrospective dispensation in respect of the major works relating to the cost of erecting scaffolding at the premises in the sum of £4500.00 plus VAT.
2. The Tribunal makes no order for the cost occasioned by the making of the application.

The application

1. The applicant by an application dated 15 December 2014 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. The premises which are the subject of the application are a three storey Victorian terraced house, built in approximately 1900, which has been converted into 6 flats.

The background

3. A Case Management Conference was held on 16 January 2015 where directions were given for the progress of this case.
4. Paragraph 2 and 3 of the Directions stated:- *“The applicant contends that due to water ingress scaffolding was required to be erected to enable inspection of the property and provide a full report for repairs required. The application appears to relate only to the cost of this inspection and not to any works carried out/proposed to be carried out to remedy the cause of the water ingress. The Applicant should clarify this in their statement. The inspection has taken place.*
5. *The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.*
6. The Directions also provided that -: **As soon as possible but not later than 30 January 2015** the leaseholder(s), either jointly or individually, should complete the attached form, and

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

return it to the tribunal, with a copy to the applicant indicating whether:

- (i) *you consent to the application (i.e. agree to dispensation from full consultation)
or, you oppose the application (in whole or in part).*
- (ii) *you wish to name a spokesperson;*
- (iii) *you wish the tribunal to hold a hearing.*

7. The Directions also provided that unless either of the parties objected the application could be determined on the basis of written representations rather than proceeding to a hearing.
8. The Applicant's sent a bundle of documents for the determination which included a statement of case which stated as follows-: "*...Our application is for the erection of the scaffolding only as at this stage we do not know what works will be required until the surveyor can access the roof... We have since appointed a surveyor to attend and we are currently awaiting their full specification of works. Once this is received, we may need to apply for dispensations to waive the consultation period. The reason why we are unable to follow the correct consultation process is because the damp which is penetrating both the flats and is affecting the resident's way of living...*"

The Applicant's case

9. The Applicant had also enclosed the following documents in their bundle-:
- Copies of letter dated 12 December 2014 (Section 20 notice concerning the requirement to undertake work to the roof and chimney of the premises.
 - Copy of an estimate from Avalon 3 Ltd dated 17 December 2014 for the cost of scaffolding in the sum of £4,500.00 (excluding Vat).
 - Copies of letter dated 29 January 2015 "Roof works update", which dealt with the scope of the work, and the further arrangements for consultation for the roof works under section 20 of the Landlord and Tenant Act 1985.
 - A copy of the initial chartered surveyor's report from LBB Chartered Surveyors dated 25 November 2014

- Copies of both emailed response received from leaseholders, and pro forma responses to the Property Tribunal in compliance with the directions.
 - A copy of the lease.
10. The initial surveyor's report stated that the property had a pitched timber roof which had been finished in natural slates and four chimney stacks located on the flank elevations of the property. During the initial inspection, the surveyor gained access to both flat 6, and flat 3, the properties affected by the damp, although access was gained to the loft space in flat 6. The Surveyor had been unable to reach a conclusion concerning the damp to flat 3.
 11. The surveyor noted of flat 3 that -: *"...Dampness was noted within the master bedroom of the subject property at the abutment of the flank wall to the main house and the raised first floor bedroom We would expect that this ingress is reasonably straight forward to remedy once access is available and a close examination of the area can be undertaken externally."* The need for further access was repeated in the conclusion of the report.
 12. In the letter dated 29 January 2015 sent to the leaseholders from Hamilton King Management Limited it was confirmed that the application for retrospective consent was in relation to the scaffolding only and not for the work required to the roof. The letter stated at paragraph 4, *"... We have already served the Notice of Intention for the required roof works, the specification has now been sent out to tender and all tenders are due back on 12 February 2015. After this date we will serve the section 20 11 Notice of Estimates which is the second notice in the section 20 process..."*
 13. The bundle of documents also included four pro forma forms returned by Leaseholders to the Applicant indicating that they were content for the matter to be dealt with by a paper determination.

The Respondents' case

14. Written representations were received from the following Respondents-:
 - Joanna and Stuart Luck received on 28.01.15

- Verity Jeffery received on 29.01.15
- Ravindra Rajakariar received on 29.01.15
- Christian Sponziello dated 13.02.2105
- Shameema Yousuf, dated 16.02.2015

15. The Only Leaseholder who did not provide a written response was the leaseholder of flat 1.
16. In their separate responses all of the leaseholders identified a common and reoccurring theme which is summed up in the paragraph 2 of the response of Christian Sponziello which stated-: “*Due to the on-going nature of the issue with the roof at 26 Pelham Road, I have no objection to retrospective consent, on the condition that any costs incurred is covered by the landlord, who can then proceed to recover from contractors and insurers who have not completed the previous work to a satisfactory standard...*”
17. In their written submissions all of the leaseholders refer to previous repairs which have been undertaken at the property. In their joint, written, submissions, Joanna Luck and Stuart Luck stated as follows-: *Please allow me to identify the findings of the report and the supporting evidence of previous works by referring to the documents provided by Shameema Yousuf's representations. Included in the package of documents are [Sic] two reports from LBB...Both reports highlight significant defects to the work carried out to date; specifically defective mortar, ad hoc work to the defective back guttering. In the summary LBB identify the damp ingress to be as a result of incorrect installation of uPVC over fascia boards and the failure of the lead work to the chimney stack...*”
18. In her written representations, Shameena Yousuf enclosed copies of the two reports of LLB Chartered Surveyors (referred to above), email correspondence between herself and Hamilton King (Managing agents) and correspondence from Lewis Berkeley Surveyor's dated 10 01.2013, In an email dated 28 September 2012, sent by Ms Yousuf to Hamilton King managing agents, Ms Yousuf stated “*...Last year at the time of the major works on the property, discussions with HK(Karen Young and the surveyor Lewis Berkeley highlighted the need to have the issues investigated properly once again ... the wet walls and ceilings had reappeared. Having a surveyor investigate was suppose to certify and recognize the problems, and have them ... rectified once and for all.*”

HK had the surveyor take a look internally and externally before works commenced...”

19. Dr Rajakariar stated in his submissions that these issues had been *“ongoing between 2007 to 2014”* with *“...significant costs and inconvenience to the leaseholders”* Ms Jeffery agreed with the detailed submissions made by the other leaseholders.

The tribunal’s decision

1. The Tribunal consider that in all of the circumstances in this case it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the work of erecting scaffolding at the premises in the sum of £4,500.00 plus VAT.

Reasons for the decision

2. The Tribunal had to consider whether it was reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading “Consultation Requirements: Supplementary”. That subsection reads as follows: *“Where as 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 it is reasonable to dispense with the requirements”*.
3. The Applicant stated that they were unable to consult fully under section 20 as the condition of the premises was such that the damp was *“penetrating both of the flats and is affecting the resident’s way of living”*
4. The Tribunal considers that whilst this was an important consideration, the main issue was that set out in the report of LBB Surveyors which stated in the conclusion that *“Access is required to this location and a careful examination of the area undertaken and necessary repairs instituted...”*
5. The Tribunal noted that until the scaffolding was erected, it was not possible to confirm the nature, scope and extent of repairs, and to deal with why, this on-going issue had not been resolved by previous repairs. Given this, in order to safeguard future repairs, and ensure that the surveyors could correctly identify what was required and that the specification of the major works was adequate. It was necessary for the scaffolding to be erected to provide access for the purpose of carrying

out the inspection. This has now been done, and is the subject of this application.

6. The Tribunal noted that although there was and indeed is strong opposition to the Leaseholders being required to bear the cost of this, there was a broad acceptance that it was a necessary step, and that there was urgency in the work of exploration being undertaken.
7. The Tribunal are satisfied that the work undertaken was urgent and that in these circumstances the consultation procedure ought to be dispensed with. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985 for this very limited aspect of the work. Given this, the parties attention is drawn to the fact that the Tribunal have not made a determination on the reasonableness and payability of the service charges under Section 27 A of the 1985 Act for this or any of the work to the roof.
8. It was noted that there is opposition to the leaseholders paying further service charges in relation to the work to the roof, and without making any findings of fact the grounds for that opposition have been set out above.
9. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work including the scaffolding are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
10. There were no applications for costs before the tribunal.

Chair Ms M W Daley **Date** 20 March 2015

Appendix of 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
 - (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 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.
- (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) a leasehold valuation 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.]

1. **S20ZA Consultation requirements: supplementary**

- (1) 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.
- (2) In section 20 and this section—
 - "qualifying works" means works on a building or any other premises, and
 - "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

- (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
 - (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
 - (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the Recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
 - (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
 - (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.