



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

Case Reference : LON/00AW/LDC/2015/0066

Property : 17 Queen's Gate Terrace, London,
SW7 5PR

Applicants : 17 Queen's Gate Terrace
Management Ltd

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
Mr S Mason FRICS

**Date and venue of
Paper Determination** : 29 June 2015 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 29/06/15

DECISION

Decision of the tribunal

1. The tribunal grants retrospective dispensation in respect of the major works relating to 50% of the cost of erecting scaffolding and carrying out work to the chimney stack shared between No 15 and No 17 Queen's Gate Terrace.
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 06 May 2015 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 converted, classical white stucco fronted, Grade 2 listed, period building, which has been converted into six apartments with a lift.

The background

3. A Case Management Conference was held on 29 May 2015 where directions were given for the progress of this case.
4. The Directions provided for the matter to be determined on the basis of written representations and provided that those tenants who oppose the application shall by Monday 15 June 2015 send a reply form together with a statement and copies of any documents upon which they wished to rely.
5. The Directions also provided that -: *"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.**"*

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

The Applicant's case

6. The Applicant in their Application stated that the grounds upon which the application were made were that the Applicant had been served with a notice, under section 3 of the party wall etc Act 1996 from their neighbour at 15 Queen's Gate Terrace in respect of the shared chimney stack. The notice dated 17 November 2014 stated as follows: "*Under Section 2(2) paragraph (b) (f) and(g) and with reference to the Party Wall separating the above premises, it is intended to carry out the works detailed below, after the expiration of two months from the service of this notice...*"
7. The works were listed as -:
 - To cut away any projections from the Party Wall over the Building Owner's land;
 - To take down and rebuild leaning existing chimney, protecting any flues as necessary;
 - To cut into the Party Wall to remove existing and install new flashings;
 - To carry out any necessary repairs to the Party Wall.
10. The notice provided that if the works were not consented to within 14 days then the Applicant was deemed to have dissented and a dispute would have arisen.
11. The Tribunal were provided with a copy of the Award under the provisions of the Party Wall Act 1996 ("the Act"), following the appointment of a two surveyors, Mr Ashley Patience BSc and Mr David Hooper MRICS. The Tribunal noted that although a copy of an award was included in the bundle, this was undated and had not been signed by the surveyors for the parties.
12. In the Application for dispensation the Applicant stated that the Applicant had served a notice of intention to carry out the works dated 30 January 2015 as it had anticipated by the Applicant that the Applicant, would be given the opportunity to be involved in the tender process to select a contractor. However this was not the case as 15 Queen's Gate terrace started works without consulting with the Applicant.

13. No information has been provided to the Tribunal concerning the likely cost of the work. The only information is as set out in an email dated from James Reed of SKPM Property Consultants 26 March 2015 to Andrew Jeffery which suggests that the lowest estimate was in the sum of “over 200k”.

The Respondents’ case

14. The only Leaseholder who did provide a written response was the leaseholder of flat C.
15. Mr Nicola Staniscia of flat C, who in his written response (at paragraph 3:- *“... The statement does not give details of the date of the Party Wall Notice nor the date of the request of the 50% contribution of the Party Wall [Chimney]Works nor the Landlord’s response to the notice or whether an independent surveyor was appointed ... I consider these anomalies to be very important to the court to be able to assess the reasonableness of the Landlord’s actions in dealing with the issue of the Party Wall Notice and therefore whether to dispense with the section 20za formalities... 4. The Landlord has also failed to show what steps they have taken to ascertain what the costs of the works are likely to be...5 Therefore I consider the Landlord has not acted reasonably and an Order dispensing ...should not be granted...”*

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 works.
2. The Tribunal noted that the Chimney Stack was considered to be in a dangerous condition and that the landlord did not undertake the work but was required by virtue of the Act to respond to the notice and consent to the work or appoint a surveyor. The surveyor is required to represent the Applicant, and to act as an independent expert who would agree the award with the other party’s surveyor, such work as was considered necessary.
3. Although the award is included in the bundle the Tribunal have noted that it is unsigned, there is however a well established procedure for disputes including disputes as to cost under the Act.

Reasons for the decision

4. 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 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 it is reasonable to dispense with the requirements*".

5. The Tribunal are satisfied that the works undertaken were urgent and that the landlord had a limited say, given the process in the timing of the work, and the contractor instructed. In these circumstances the consultation procedure ought to be dispensed with.
6. 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 under the 1996 Act.
7. The Tribunal have noted the points made by the leaseholder of Flat C, and for this reason have granted dispensation on the terms that:-
 - A copy of the party wall etc notice together with the signed Party Wall Award be served on each of the leaseholders
 - Details of the correspondence from the Landlord to ascertain the cost of the works be served on the leaseholders
 - All of the documents referred to in paragraph 5 shall be forwarded to the leaseholders within 14 days.
8. 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.
9. There were no applications for costs before the tribunal.

Chair Ms M W Daley

Date 29 June 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.

Appendix

Leaseholders

Flat A Dhafer Sahmi Jaber Mulreh Al Ahbabi

Flat B Dr Jeronimo Parra Arcas & S G Benavente

Flat C Mr Nicloa Staniscia

Flat D Fadi Halawi & Rima Safieddine

Flat E Nathalie Shariat

Flat F Avi Bouhadana & Eve Bouhadana