



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

Case Reference : **BIR/37UG/LDC/2020/0008**

HMCTS Code : **P:PAPERREMOTE**

Property : **60 Dale Lane, Blidworth, Mansfield
NG21 0TQ**

Applicant : **Newark and Sherwood District
Council**

Respondent : **Mrs G. Brown**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for emergency
repairs to the water main**

Tribunal Members : **Mrs A Rawlence MRICS
Mrs K Bentley**

Date of Decision : **12 October 2020**

DECISION

Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper.

Decision of the tribunal

1. The tribunal grants dispensation in respect of the repair work to the water mains pipe that serves a block of flats at Dale Lane, Blidworth, where the leaseholder/respondent resides.
2. The Tribunal orders that details of the cost together with an estimate of the service charges payable by the leaseholder shall be provided to the leaseholder within 28 days, if not already done so.

The Application

3. Newark and Sherwood District Council ('The Applicant') by an application dated 30 July 2020 sought retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('The Act') from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
4. 60 Dale Lane, Blidworth ('The Property') which is the subject of the application is a flat situated within a block of four flats. Mrs G Brown ('The Respondent') is the leaseholder.

The Background

5. Directions were given in writing on 20 August 2020, for the progress of this case.
6. By 8 September 2020 the Applicant was to send a bundle of documents itemised in the Directions to the Tribunal and the Respondent.
7. The Directions also provided that, if the Respondent wished to comment, she should submit a statement by 22 September 2020 to both the Applicant and the Tribunal.

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

8. The Directions also provided that the application could be determined on the basis of written representations. However, the Respondent was given the option of making a request for a hearing by 22 September 2020. Neither the Applicant nor the Respondent have requested a hearing, and the Tribunal are satisfied that there is sufficient information before it to enable it to decide this matter without injustice to any party without a hearing.

The Applicant's case

9. On 26 June 2020 it was reported to the Applicant that water was rising from underneath the Respondent's property and there was no water supply to the four flats in this block. Emergency repairs were carried out as a temporary measure on 29 June 2020 and a full repair including replacing the existing water main was carried out on 30 June 2020.
10. Subsequently a bricklayer was required to make good after the recent flood, brick up a small hole and concrete where the incoming supply entered the building in the hallway.
11. As the nature of the works were an emergency due to a burst water pipe the Applicant was unable to complete the consultation process as required under section 20 of The Act.

The Tribunal's decision

12. The Tribunal notes that there has been no objection from the Respondent.
13. The Tribunal, having considered all of the circumstances in this case, has decided that it is reasonable to dispense with the statutory consultation requirements of section 20 of the Act in relation to the work to repair and replace the water pipe at The Property.

Reasons for the decision

14. The Tribunal, in reaching its decision, 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*".

15. The Tribunal find that the Applicant was unable to consult fully under section 20 due to the urgent nature of the work and the time need to carry out a full, section 20 consultation exercise.

16. Accordingly, the Tribunal is satisfied that the works undertaken were 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 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 work.**

17. The leaseholder will, of course, enjoy the protection of section 27A of the 1985 Act so that if she considers the costs of the work are not reasonable (on the grounds set out above or any other ground) she may make an application to the tribunal for a determination of their liability to pay the resultant service charge.

Anthea J Rawlence
Chair

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.