



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

Case Reference : **LON/00BJ/LDC/2020/0007
P: PAPERREMOTE**

Property : **Balvernie Mews, 56-58 Balvernie
Grove, Southfields, London SW18
5RU**

Applicant : **Southern Land Securities Limited**

Representative : **Together Property Management
Limited (Managing Agents)**

Respondents : **The various leaseholders listed in
the schedule to the application**

Representative : **Unrepresented**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985
Dispensation with consultation
requirements**

Tribunal Members : **Judge Donegan**

**Date of Paper
Determination** : **09 June 2020**

Date of Decision : **09 June 2020**

DECISION

This has been a remote hearing on the papers which has not been 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. The documents that I was referred to are in a bundle of 62 pages, the contents of which I have noted.

Decision of the tribunal

- (a) The tribunal grants retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of external works undertaken at Balvernie Mews ('the Property').**
- (b) No terms are imposed on the grant of dispensation.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act. The application concerns external works undertaken at the Property in the second half of 2019 and the early part of 2020.
2. The application was dated 02 January 2020 and directions were issued on 08 January. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 09 June 2020.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property comprises four self-contained flats over ground and two upper floors, each with their own street entrance. There are no internal common parts. The applicant is the freeholder and the respondents are the leaseholders of the four flats. The Property is managed by Together Property Management Limited ('TPML').
5. TPML undertook a full section 20 consultation for the overhaul, repair and redecoration of the external common parts at the Property, between January and May 2019. CDM Maintenance & Construction Limited ('CDML') produced the lowest tender (£35,332.50 excluding VAT) and was appointed to undertake the work.
6. The external work commenced on 18 July 2019. In August 2019 the supervising surveyor, Mr Barend van Rensburg of Lewis Berkeley Limited, discovered severe cracking and vegetation growth in the rear wall. This had not been inspected previously, as it can only be accessed and viewed from the properties behind. An insurance claim was made in respect of the damage but has been rejected by loss adjusters. TPML is seeking advice from a structural engineer with a view to challenging that decision.

7. CDML undertook additional work whilst on site, comprising the removal of vegetation and repointing of the rear wall and various gutter repairs. None of the additional work was covered by the original tender or section 20 consultation. The estimated cost of the additional work is £15,652.50 plus VAT and professional fees. The applicant seeks dispensation in the light of this additional work

The grounds of the application

8. The grounds were set out in a helpful statement of case dated 03 February 2020. Various relevant documents were exhibited, including the section 20 notices, TPML's correspondence with Mr van Rensburg, the loss adjusters and the leaseholders and photographs of the damaged rear wall.
9. In brief, TPML contend that it was reasonable for CDML to undertake the additional work, without undertaking a further section 20 consultation, whilst the scaffolding was in place and access could be obtained from neighbouring properties. Had they re-consulted then this would have led to substantial delays and increased costs.
10. Paragraph 3 of the tribunal's directions required the respondents to complete and return response forms by 31 January 2020, stating whether they support or oppose the dispensation application. Only one such form has been returned and the leaseholder concerned (Ms Guilloton – Flat D), supports the application. None of the respondents has opposed the application, identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.

The tribunal's decision

11. The tribunal grants retrospective dispensation for the external works, including the additional works described at paragraph 7 above. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

12. The tribunal finds that it was reasonable for CDML to undertake the additional works whilst on site. Had TPML undertaken a further section 20 consultation then this would have led to a delay of at least three months, increased costs and possible access problems. TPML has acted reasonably by making an insurance claim for the additional works and keeping the leaseholders informed of developments.
13. The dispensation application is supported by Ms Guilloton. None of the respondents has opposed the application or identified any prejudice

that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.

14. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for all of the external works, including the additional work.
15. This decision does not address the cost of the external works or whether the respondents are liable to contribute to the cost, via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act.

Name: Tribunal Judge Donegan **Date:** 09 June 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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) the appropriate 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.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.