



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

Case Reference : **LON/00AG/LDC/2021/0260**

Property : **13 Gayton Crescent, London NW3
1TT**

Applicants : **Rufus Rottenberg and Felicity
Blackwell**

Respondents : **The leaseholders of the flats within
the property**

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** : **13 December 2021 Paper
Determination dealt with remotely**

Date of Decision : **23 December 2021**

DECISION

Decision of the tribunal

- i. The tribunal grants dispensation in respect of the major works relating to the the boundary wall between 12 and 13 Gayton Crescent, including the works to the foundations.**
- ii. The Tribunal directions that the Applicant shall provide details of the builder and their estimate, within 28 days of the date of this decision, to the leaseholders.**
- iii. ii. The Tribunal makes no order for the cost occasioned by the making of the application.**

The application

1. The applicant by an application, made in 4 October 2021 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from part 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 was originally constructed as a semi-detached Victorian House, with a lower ground floor with entrance at basement level, the property has since been divided into four self-contained flats.

The Background

3. This application, sought an order for dispensation of the consultation requirements in respect of the premises, the grounds upon which the dispensation is sought, is somewhat mixed, the Applicants wanted to use a builder recommended by the structural engineer, as they considered that there was a risk that substandard work would be done. Further as the work proposed involved structural work at foundation level, there was a risk that a failure to carry out the work might result in movement at foundational level which would increase the risk of the gas pipes fracturing.

The work

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

4. In the statement in support of the work the Applicants stated that:- The top of the boundary wall between 12 and 13 Gayton Crescent has some cracks on the 13 Gayton Crescent side, and the back of the basement vault of 13 Gayton Crescent, underneath the front path and pavement, shows evidence of deformation.
5. A Structural Engineer (SE) was appointed by me and on 23 February 2021 advised that work needed to be undertaken. If the wall damage was to get worse, this risked not only damaging the number 12 side of the wall, but also fracturing the gas pipe that is attached to the surface wall...I want to proceed using builders that the SE recommended, because I want to ensure that since the work relates to the structure of the building, the job is done by a person who the SE had worked with before, rather than relying on an untested contractor, The SE was able to find only one trusted builder who was interested in quoting.”
6. The work required was for the boundary wall to be strengthened including the foundations by adding some new brick piers to a new cement footing, rebuilding the retaining wall next to the wall then relaying the courses that are cracked. There would also be structural steels inserted to support the vaults running beneath the front entrance and public footpath.
7. On 20 September 2021, the Applicant wrote to the leaseholders, informing them of the work that needed to be undertaken, and setting out the reasons for wishing to dispense with the consultation requirements.

The funding

8. The cost of the proposed work was set out in a schedule in the total sum of £19,998.00, with proposed interim charges of £5,000 for each leaseholder. The cost of the work included the Owner's party wall surveyor, Neighbours party wall survey and the structural engineer's costs.

Directions by the Tribunal

9. On 26 October 2021, directions were given by the Tribunal setting out the steps to be taken by the Applicant, (including serving the directions on the respondents) for the progress of this case.
10. The Directions at paragraph (3) stated 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.”

- (i) The Directions also provided that -: *Those leaseholders who oppose the application shall by 23 November 2021 -: complete the attached form and send it by email to the Tribunal; and*
 - (ii) *Send to the applicant/ landlord a statement in response to the application with a copy of the reply form by email or by post. They should send with their statement copies of any documents upon which they wish to rely.*
11. The Directions also provided that the application would be determined on the basis of written representations in the week commencing 13 December 2021, and that any request for a hearing should be made by 6 December.2021.
12. No request was made for a hearing, and the Tribunal satisfied itself that the matter was suitable to be dealt with on the papers.

The Applicant's case

13. The Tribunal was provided with a bundle comprising 54 pages which included written statement of the reasons for the application together with the application form, and the Structural Engineers Report dated 23 February 2021.
14. Following the report referred to above the Applicants contacted their insurers to see whether the building insurers would cover the cost of the repair, following an inspection, the insurers confirmed that there was no evidence of subsidence and said that these defects were not covered by insurance.
15. At the time that the applicants submitted their bundle they noted that there were no responses from the leaseholders, either opposing or agreeing to the work.
16. Mr Shawn Majeski , wrote to the Tribunal on 26 October 2021, in the email he wrote to ask what would happen if the sub-leaseholders oppose the application and the tribunal decides not to dispense with the rules for the consultation processes, did that mean that the freeholder could start again?
17. The Tribunal acknowledged the query but did not provide advice .. In any email dated 28 October 2021, Mr Majeski,

acknowledged that additional consultation would increase the expense, and given this, he was happy for dispensation to be granted.

The tribunal's decision and reason for the decision

- I. The Tribunal has noted that the only issue which it is dealing with is whether it is reasonable to dispense with the statutory consultation requirements, it is not in this application required to make a finding concerning the reasonableness and payability of the work.
- II. However in *Daejan Investment Ltd v Benson* 2013 it was noted in paragraph 54. That “ ... the LVT is not so constrained when exercising its jurisdiction under section 20ZA (1) it has power to grant a dispensation on such terms as it thinks fit-provided of course that any such terms are appropriate in their nature and their effect...”
- III. The Tribunal noted that the issues raised by Mr Shawn Majeski , are matters that he would no doubt have wished to raise on consultation, and although they do not affect the remit of the Tribunal's decision, and they also do not prevent Mr Majeski, raising issues of payability.
- IV. The Tribunal has also born in mind that the report was prepared in February 2021and that there has been no great explanation as to the chronology during the interim. The Tribunal also noted that a detailed estimate from the contractor who is due to carry out the work has not been provided.
- V. However the Tribunal having considered all of the evidence in detail is satisfied that without the works, potentially the building further damage would be caused to the building with the possibility of damage to the gas pipe.
- VI. The Tribunal noted that its jurisdiction in this matter is somewhat limited and the scope is set out in Section 20ZA and as discussed by the court in *Daejan –v- Benson (2013)* which requires the Tribunal to decide on whether the leaseholders would if dispensation is granted suffer any prejudice. Although the Tribunal does not find that there is any prejudice to the dispensation being granted.

- VII. **The Tribunal acknowledge that the limit in its jurisdiction has meant that although the Tribunal has considered whether the work is within the scope of the repairing covenant in the lease, it is for the landlord to satisfy themselves of this, and to determine the proportion payable by each leaseholder.**
- VIII. **As nothing in the Tribunal's decision deals with the reasonableness or payability under the lease of the work in issue.**
- IX. Further the Applicant **shall within 28 days** shall provide full details of the builder and the estimates for the cost of the work.
- X. 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 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.
- XI. No applications were made for costs before the tribunal.

Judge Daley

Date 23 December 2021

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.