



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

**Case reference** : **LON/00BK/LDC/2021/0167**

**HMCTS code  
(paper, video,  
audio)** : **P: PaperRemote**

**Property** : **Ambika House, 9A-9B Portland  
Place, London W1B 1PR.**

**Applicant** : **Ambika House Limited**

**Representative** : **Platinum Associates Limited  
Julie Kaye**

**Respondent** : **The leaseholders of the Property listed  
in the application**

**Representative** : **N/A**

**Type of application** : **Dispensation from consultation  
requirements**

**Tribunal  
member(s)** : **Judge H Carr  
Mrs A. Flynn**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **10th August 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which was not objected to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in on paper. The documents that the Tribunal were referred to are in a bundle of 123 pages the contents of which have been noted.

## **Decision of the tribunal**

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

## **The application**

2. On 29th June 2021 Platinum Associates Ltd, the representative of the Applicant landlord, issued an application for dispensation from the statutory consultation requirements in respect of works to the passenger lift serving block 9A of the building.
3. The property comprises a purpose build block of flats constructed in the 1950s. It comprises 25 flats and one commercial unit which is at ground and first floor level. The building is separated into two core blocks known as 9A and 9B. 9A houses flats 1 – 12 and the Penthouse Flat from the second to the ninth floor of the building. 9B houses flats 14 – 25 from the second to the eighth floor of the building. 9A and 9B have separate entrances at street level with separate passenger lifts serving each set of flats.
4. The ground and first floors of the building comprise the commercial unit which has a separate entrance at street level. The building has a basement which houses a car park and plant and machinery for the building.
5. The estimated cost of the works is £18,408.

## **Determination**

### **The Evidence**

6. The evidence before the Tribunal indicates as follows:
  - (i) The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 for the following reasons:
    - (a) The lift is currently out of service because the brake unit has failed. When working it is used by all residents of No 9A as well as patients of a dental practice located in one of the flats. There is a goods lift serving the block, but this

is not designed for use by passengers but for the transport of goods and rubbish. The goods lift has a heavy manual door that is difficult to open and it is difficult to operate. This particularly disadvantages elderly residents, disabled residents, those using pushchairs and those using walking aids. Moreover the lift does not serve the residents in the same way due to its location at the rear of the building. The works are therefore urgently required to provide the residents with safe access to their properties.

- (b) A replacement brake unit alone can only be procured as a bespoke item from the Ziehl-abegg factory in Germany with a lead time of 12 weeks. Although the replacement of the brake unit only would be lower in cost than replacement of the motor this would mean that the lift would remain out of commission for an extended period of time. A replacement motor unit (which includes the brake unit) is an easier and quicker replacement to procure.
- (c) In addition, the advice provided by the lift contractor is that if the brake unit alone were replaced and then the motor failed the overall cost would be higher. The motor is 12 years old, and the advice is that it has a typical lifespan of 15 years.
- (d) The Applicant has complied with the statutory consultation procedure in terms of the steps required but has shortened the timescales between each stage to reduce the amount of time the passenger lift is out of service. The Notice of Intention was served on 19th May 2021. Leaseholders were invited to make written observations and/or nominate a suitable contractor by 2nd June 2021. Five contractors were invited to tender for the work.
- (e) A statement of estimates was issued to all leaseholders on 17th June 2021. It appended a summary of the responses of the leaseholders and a schedule setting out a summary of the costs received from the four contractors who

had tendered for part or all of the proposed works. The statement of estimates advised leaseholders that the landlord proposed to appoint the cheapest of the three contractors who had tendered for all of the proposed works to undertake the works. The statement of estimates invited observations from the leaseholders within 14 days.

- (ii) The Applicant has engaged extensively with the leaseholders.
  - (a) It sent a full explanatory letter to the leaseholders
  - (b) It hosted a virtual meeting via Zoom to which all leaseholders were invited to discuss the proposed works.
  - (c) It has proactively contacted all leaseholders individually to obtain and collate their observations in relation to the proposed works and address any question raise. All but one of the leaseholders provided their observations on the proposed works.
  - (d) The Applicant provided full details of queries, objections and responses received and provided throughout the process.
  - (e) The applicant has confirmed that no objections were received from the leaseholders following their receipt of the Tribunal's directions.

### **The Law**

- (i) The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs (1) provides

‘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 agreements, the tribunal may make the

determination **if satisfied that it is reasonable to dispense with the requirements'** (emphasis added).

**The tribunal's decision**

7. The tribunal determines to grant the application.

**Reasons for the tribunal's decision**

8. In the light of the evidence provided to the tribunal and in particular, the urgency of the works and the unique character of the works, it is reasonable to grant the application sought.
9. The tribunal notes that all stages of the consultation process have been carried out but with a reduced timescale for responses.
10. The tribunal also notes the extensive work carried out by the Applicant to ensure that leaseholders engaged with the process.
11. **This determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.**

**Name:** Judge H Carr

**Date:** 10th August 2021

**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 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

### **Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).

(1)