



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

Case Reference : **LON/00BK/LDC/2021/0242
P: PAPERREMOTE**

Property : **74 Carlton Hill London NW8 0ET.**

Applicant : **74 Carlton Hill Management
Limited**

Representative : **Warwick Estates**

Respondents : **The 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 member(s) : **Mr cc (Valuer Chair)**

**Date of Paper
Determination** : **23rd November 2021**

Date of Decision : **23rd November 2021**

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 43 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') for works undertaken to repair a leaking roof including lead flashing and re-pointing at 74 Carlton Hill London, NW8 0ET ('the Property').**
- (b) The term imposed on the grant of dispensation is that it is limited to the sum of £3714.00 being the amount of invoice number 1854 from D.P Buzzing & Co.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted on 16th August 2021 and directions were issued on 1st October 2021. 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 23rd November 2021.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property, appears, from Google Street View, to have been constructed as a single substantial house in the Victorian era, with brick walls below an unusual and complicated slate roof with a range of architectural features and pitches. We are further informed that the property was subsequently converted into 5 flats over four floors.
5. The applicant seeks dispensation from the statutory consultation requirements for works to repair a leaking section of roof which was allowing water ingress to one of the flats.
6. It appears that there was no market testing and a direct appointment was made to D.P.Buzzing & Co due to active water ingress. An initial inspection identified some blocked box guttering and faults to lead flashing and pointing. Scaffolding was required to provide safe access and following the initial call out on 13th July work was completed by 21st July.

7. In their statement two invoices from D.P.Buzzing were submitted No. 1854 for £3714.00 dated 25th July 2021 and No. 1968 for £312.00 dated 20th September 2021. The first invoice clearly relates to the works for which dispensation is sought, its narrative covering the services provided. As will be discussed below at 17. that is not to comment on the “payability” of the latter invoice, merely that on the evidence before it, the tribunal is not convinced that it should properly form part of this dispensation.
8. The applicant was unable to undertake any formal consultation under section 20 due to the urgency and nature of the work involved as it would have been inefficient and impractical to just make a temporary repair, as might have been appropriate with a more significant project. Following directions from the Tribunal an email was sent to all respondents on 21st October 2021 informing them of the application and that they had any opportunity of objecting if desired. The e mail informing the respondents was two days late in compliance with Directions, this short delay was not significant. There were no comments or objections to the application.
9. The only issue for the Tribunal is whether 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.**

The grounds of the application

10. The grounds are set out in the application dated 16th September 2021 as
 - (a) The Works were urgent and necessary due to on-going water ingress and the condensed timescale of the works did not allow any formal consultation.
11. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No forms were returned.

The Tribunal’s decision

12. The Tribunal grants retrospective dispensation for the Works. The term imposed on the grant of dispensation is that this is limited to the sum of £3714.00 as per D.P.Buzzing & Co invoice 1854.

Reasons for the tribunal's decision

13. The Tribunal accepts that the Works were necessary and urgent, given the nature of the leak as an unplanned event. Certainly, for such a minor repair it would not have been proportionate to try and undertake a holding repair just to allow consultation as this would have occasioned additional unreasonable costs.
14. No objections opposing the dispensation application the tribunal were made.
15. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
16. This decision does not address the cost of the 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: Valuer Chair Mark Taylor **Date:** 23rd November 2021

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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 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.

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.