



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

**Case reference** : **LON/00BG/LDC/2022/0209**

**HMCTS code (paper, video, audio)** : **P: PAPER REMOTE**

**Property** : **The Chart House, Burrells Wharf Square, London E14 3TN  
The Wheel House, Burrells Wharf Square, London E14 3TA**

**Applicant** : **Burrells Wharf Freeholds Limited**

**Representative** : **HAUS Block Management  
(Katerina Kaplanova)**

**Respondents** : **The lessees listed in the schedule to the application**

**Type of application** : **To dispense with the requirement to consult leaseholders**

**Tribunal Member** : **Judge N Hawkes  
Mr A Fonka MCIEH CEnvH MSc**

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

**Date of paper determination** : **14 March 2023**

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**DECISION**

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## **PAPER DETERMINATION**

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 191 pages and in a supplemental bundle of 10 pages (including index). The order made is described below.

### **Decision of the Tribunal**

1. The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 25 October 2022 on terms that the Applicant's costs of this application reference LON/00BG/LDC/2022/0209 are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.
2. **This decision does not concern the issue of whether any service charge costs arising from the work which forms the subject matter of the Applicant's application dated 25 October 2022 are reasonable or payable.**

### **Background**

1. By an application dated 25 October 2022, the Applicant has applied to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of what are said by the Applicant to be certain qualifying works to the Chart House, Burrells Wharf Square, London E14 3TN and the Wheel House, Burrells Wharf Square, London E14 3TA ("the Property").
2. The Tribunal has been informed that the Property comprises 1990s purpose-built blocks of residential flats facing the River Thames on the Isle of Dogs. Chart House contains 80 flats, Wheel House contains 75 flats, and the Respondents are the long lessees of the flats at the development.
3. At section 10 of the application (spelling/typing errors in the application corrected), the Applicant states:

*"We are undertaking the replacement of previously removed ACM and aluminium panels with bonded PIR foam attached them. This work is funded via the Private Sector Cladding Remediation Fund and Building Safety Fund. Now that the scaffold is up it has allowed us closely inspect the building and we have identified some repairs that we would like to carry out to the balconies and some painted metal*

*work In order to keep the same contractor on site for the duration of the works. Undertaking the works now will provide the best value for money and will shorten the duration of works on the building.”*

4. The Applicant seeks dispensation from the statutory consultation requirements in respect of the following work: *“Painting previously painted metal work on the building. Painting cantilevered balcony supports and some metal balustrades”* see page 8 of the application. The Tribunal has been informed that this work has been undertaken.
5. By an email dated 2 February 2023, the Applicant states:  
  
*“The dispensation of the Section 20 is for the balcony metal balustrades and cantilevered structures at Chart & Wheel House. In order to make sure that the balcony metal balustrades and cantilevered structures could be painted by the contractor carrying out the cladding works, using the existing access equipment on site such as scaffolding and mobile platforms, these works were carried out without entering into a Section 20 consultation. We did this in the best interest of the leaseholders to secure the most cost-effective approach.”*
6. Directions of the Tribunal were issued on 20 January 2023 (“the Directions”).
7. The Directions included provision that this application would be determined on the papers unless an oral hearing was requested. No application has been made by any party for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 14 March 2023.
8. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute.

### **The Respondent’s case and the Tribunal’s determination**

9. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.
10. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
11. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
12. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the

Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. In determining this application, the Tribunal has considered *Daejan Investments Ltd v Benson* [2013] UKSC 54, [2013] 1 WLR 854.

13. A number of objections to the application are contained in the bundle and in the supplementary bundle.
14. The lessees of 803 Chart House state that they received notification of the application on about 1 February 2022 when the work was said to be completed in about July 2022 (although on their case no relevant works were carried out).
15. They state that, on 14 May 2021, the landlord wrote to the lessees saying “*subject to confirming the precise location of the scaffolding it could also allow for the balcony metalwork to be repainted*”. The work was carried out in about July 2022 and they submit that there was therefore over a year in which to carry out a statutory consultation.
16. They also dispute that their balcony was painted; state that they paid their own contractor to paint their balcony; and state that the responsibility for this work is that of the leaseholder rather than the freeholder.
17. The lessee of 702 Charthouse disputes the Applicant’s timeline of events and states that the Applicant knew for years that the work was required. He also states that the work is not the Applicant’s responsibility under the terms of his lease. He disputes that the manner in which the work was undertaken provided best value for money.
18. He submits that financial prejudice to leaseholders is likely to have been caused by the failure to consult because, had there had been a consultation, he would have flagged up a concern that there has not been a competitive tender process for the entirety of the work which was undertaken.
19. He submits that consultation would also have flagged up the need to be accurate as to which elements of the work are chargeable to the service charge.
20. He also states that, whilst the application is dated 25 October 2022, he was unaware of the application until 2 February 2023. He invites the Tribunal to order, among other things, that no costs of the application should be passed to leaseholders to pay via the service charge.
21. The lessee of 64 Wheel House objects to the application on the grounds that the works were not the freeholder’s responsibility to perform.
22. This is simply a summary of the objections. The objections have been read and considered in their entirety.

23. It is stated at paragraph C of the Tribunal's Directions that *"This application does not concern the issue of whether any service charge costs will be reasonable or payable."*
24. Accordingly, if dispensation is granted, it remains open to any party to make an application to the Tribunal for a determination as to the reasonableness and/or payability of any service charge arising from the work which forms the subject matter of the Applicant's application dated 25 October 2022. The Respondents or any of them may still apply for a determination that no service charge is payable under the terms of their leases and/or they may still challenge the reasonableness of all or any of the service charge costs.
25. A Flyer listing organisations which may be able to provide independent legal advice, including some which may be able to provide specialist legal advice free of charge, can be obtained from the Tribunal Case Officer.
26. Tribunal's Directions included, at paragraph 1, provision for the Applicant to serve the Tribunal application on the Respondents by 3 February 2023. The Applicant appears to have complied with this direction and there was no requirement for the Applicant to service the Respondents with the application at an earlier date.
27. Whilst we accept that the proposed work to the balcony could have formed part of the initial specification, applying our general knowledge and experience as an expert Tribunal we find that it is unlikely that the full nature and extent of the work required would have been clear until after the scaffolding was in place and an inspection had been carried out. It is not contended that there was sufficient time between this point and the completion of the works for the statutory consultation process to be carried out.
28. In all the circumstances, the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 25 October 2023.
29. The Applicant's application for dispensation has succeeded and we are not satisfied on the evidence before us that the Applicant's conduct of these proceedings has crossed the threshold of being "unreasonable." We note that *"Unreasonable' conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case"* (see *Willow Court Management Ltd v Alexander* [2016] UKUT 290 (LC) at [24]).
30. However, having considered the active Respondents' representations and the Applicant's response, in our view, the Applicant's account of

the history could have been clearer and more comprehensive and we grant dispensation on terms that the Applicant's costs of this application reference LON/00BG/LDC/2022/0209 are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents

**31. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge N Hawkes

Date: 14 March 2023

**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).