

10403



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

Case Reference : **LON/00BK/LDC/2014/0068**

Property : **62-64 Warwick Square, London
SW1V 2AL**

Applicant : **Linksphere Property Management
Limited**

Representative : **Crabtree Property Management
LLP (managing agents)**

Respondent : **Various Leaseholders**

Representative : **Unrepresented**

Type of Application : **To dispense with the requirement
to consult lessees about major
works**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Philip Tobin FRICS (Valuation
Member)**

**Date and venue of
Paper Determination** : **18 November 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 November 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of roof repairs (“the Qualifying Works”) undertaken at 62-64 Warwick Square, London SW1V 2AL (“the Building”) during the spring of 2014. No terms are imposed on the grant of dispensation.

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 16 May 2014.
2. Directions were not issued until 06 October 2014. Unfortunately it appears that an email from the Applicant’s managing agents (“Crabtree”) dated 23 May 2014 that provided details of the Respondents was overlooked.
3. The directions 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 18 November 2014.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Building consists of three terraced houses, which have been converted into 15 flats. The Applicant is the management company named in the leases and the Respondents are the leaseholders of the flats.
6. The Applicant seeks retrospective dispensation in relation to the Qualifying Works, which have been completed.
7. The Applicant set out the grounds for seeking dispensation in an undated statement of case with supporting documents that accompanied the application. The directions provided that Applicant should file a bundle of documents by 27 October 2014. No such bundle was supplied to the tribunal. However the tribunal felt able to determine the application based on the documents that accompanied the application.
8. The grounds of the application can be summarised as follows:

(a) The top floor flat at the Building (Flat A) spans 62, 63 and 64 Warwick Square. The roof terrace for this flat forms part of the roof for the rest of the Building. There has been water ingress from the roof terrace that has caused damage to Flats A and B.

(b) The water damage to Flat B was discovered during the course of recent refurbishment works to this flat. It was necessary to repair the cause of the leak, prior to completion of the refurbishment works.

(c) Crabtree obtained quotes for the Qualifying Works from Regan Services Limited ("Regan"), Gigney Property Services Limited and Dewl. The Qualifying Works consisted of removing the timber decking on the roof terrace and recovering the roof with asphalt, to include fitting all lead flashings and new promenade roof tiles.

(d) The Applicant is responsible for the maintenance and repair of the roof, pursuant to clause 5(A) of the leases.

(e) Crabtree sent a circular letter to all of the Respondents informing them of the need for the Qualifying Works and referring to the quote from Regan, which was for a sum of £9,630 plus VAT. That letter explained that the Qualifying Works were urgent and that there was insufficient time to embark upon a full consultation exercise under section 20 of the 1985 Act. A copy of the template letter accompanied the application.

(f) The Applicant seeks dispensation upon the grounds that the Qualifying Works were urgent, given the water damage to Flats A and B.

9. Paragraph 6 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they supported the application. The leaseholders of four of the flats (including the leaseholders of Flats A and B) have indicated their support. None of the Respondents has opposed the application, identified any prejudice or proposed any terms as a condition of granting dispensation.
10. The tribunal has determined the application based upon the Applicant's statement of case and supporting documents and the completed response forms.

The tribunal's decision

11. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act, in respect of the Qualifying Works. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

12. The Qualifying Works were urgent, given the water damage to Flats A and B and given the risk of further damage. Embarking upon a full consultation exercise would have taken 3 months or longer and would have substantially delayed the Qualifying Works.
13. The only leaseholders that have responded to the application have all given their support. There have been no objections and none of the leaseholders have suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the leaseholders have suggested that any terms should apply to the grant of dispensation.
14. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the leaseholders from seeking a determination of their liability to contribute to the cost of roof repairs, pursuant to section 27A of the 1985 Act. Further the tribunal notes that the Applicant's statement of case makes no mention of any insurance claim in relation to the damage of the roof. It may be that a claim could have (or has) been made on the insurance policy for the Building, which would have an impact on the Respondents' liability to contribute to the cost of the Qualifying Works, via their service charges.

Name: Tribunal Judge Donegan **Date:** 18 November 2014

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.

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.