

12064



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

Case Reference : **LON/00AL/LDC/2016/0110**

Property : **Ground and First Floor Flats, 7
Plumstead High Street, Woolwich,
London SE18 1SA**

Applicant : **South London Ground Rents
Limited**

Representative : **Inspired Property Management
Limited (managing agents)**

Respondent : **Mr G Ogbuka (GFF) and Mr D S
Bhachu (FFF)**

Representative : **Unrepresented**

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

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Luis Jarero BSc FRICS (Valuer
Member)**

**Date and venue of
Determination** : **29 November 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **29 November 2016**

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”) at 7 Plumstead High Street, Woolwich, London SE18 1SA (“the Building”). Details of the Qualifying Works are set out in the specification prepared by Hallas & Co Chartered Surveyors (‘Hallas’), a copy of which is to be found at appendix 5 to the dispensation application.
- (2) 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 17 October 2016 and directions were issued on 21 October 2016.
2. The directions provided that the case would be determined upon the basis of written representations, unless any of the parties requested an oral hearing within 7 days. There has been no request for an oral hearing and the paper determination took place on 29 November 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Building is a two-storey terraced house that has been converted into two self-contained flats. The Applicant is the freeholder of the Building. The Respondents are the long leaseholders of the flats.
5. The Applicant seeks dispensation in relation to the Qualifying Works, which are said to be urgent.
6. The Applicant set out the grounds for seeking dispensation at page 8 of the application form. There was a report of water ingress into the first floor flat at the end of May 2016. CSCS (Contracts) Limited (“CSCS”) were instructed to investigate the problem and produced an undated photographic schedule and estimate for remedial works, in the sum of £7,600 plus VAT.
7. The managing agents sent notice of intention to the parties on 31 May 2016, pursuant to section 20 of the 1985 Act. Hallas were instructed on 19 July 2016 and produced a specification of works. An initial quote was obtained from CLC Contractors Limited (“CLC”) on 04 August 2016 who subsequently issued a revised quote in the total sum of

£20,387.53, including contract administrator's fees and VAT. The Qualifying Works are said to be urgent as "*The progressive nature of the problem leaves the external and internal areas of the building open to further deterioration*".

8. Paragraph 4 of the directions required the Respondents to complete and file response forms with the tribunal, if they wished to oppose the application. Neither of the Respondents has opposed the application or filed any statement in response to the application.
9. The tribunal has determined the application based upon the information contained in the application form and the various appendices.

The tribunal's decision

10. 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

11. The Qualifying Works are urgent, given the water ingress into the first floor flat and the onset of winter. The photographic schedule shows the roof and chimney stacks to be in poor condition. The stacks are particularly bad and may be unsafe. Embarking upon a full consultation exercise will 3 months or longer and will substantially delay the Qualifying Works.
12. Neither of the Respondents have objected to the application or suggested they will be prejudiced if dispensation is granted. Furthermore, none of the Respondents have suggested that any terms should apply to the grant of dispensation.
13. 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 the Qualifying Works, pursuant to section 27A of the 1985 Act. The tribunal notes the original estimate from CSCS was for £7,600 plus VAT, which is substantially below the revised quote from CLC.

Name: Tribunal Judge Donegan **Date:** 29 November 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.