



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

**Case Reference** : **LON/00AG/LDC/2019/0173**

**Property** : **20, College Crescent, London NW3 5LL**

**Applicant** : **Fullbase Ltd.**

**Respondent** : **Leaseholders of flats 1 to 5, 20, College Crescent, London NW3 5LL**

**Type of Application** : **For the determination of an application for dispensation from the statutory consultation requirements**

**Tribunal Members** : **Tribunal Judge Stuart Walker (Chairman)  
Mr. Michael Taylor FRICS  
Mrs. Lucy West**

**Date and venue of Hearing** : **Decided on the Papers**

**Date of Decision** : **7 November 2019**

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**DECISION**

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**Decision of the Tribunal**

- (1) The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of external replacement and re-covering of the damaged and leaking main rear high-level flat roof areas and other associated areas to ensure that the flats below are free from water ingress and to ensure that the roof and surrounding areas are watertight and weatherproofed.

## Reasons

### The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of repairs to a leaking roof at the property.
2. The application was made on 26 September 2019. It stated that a flat roof at the property was leaking badly, that it had caused part of the ceiling to collapse in the laundry room in flat 4, and that continued leakage would cause further damage to flat 4.
3. Directions were issued on 9 October 2019. They provided that the Tribunal would determine the application on the papers in the week commencing 4 November 2019 unless either party made a request for an oral hearing by 23 October 2019. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.
4. The directions required the Applicant to send to each of the leaseholders by hand delivery or first-class post copies of the application form and the directions by 16 October 2019. They were also to display a copy of both in a prominent position in the common parts of the property.
5. The Applicant was also required to file with the Tribunal by 18 October 2019 a certificate to confirm that this had been done.
6. Under the terms of the directions any leaseholders who opposed the application were to complete a reply form and send it to the Tribunal by 23 October 2019 and, by the same date, to send to the landlord a copy of any documents on which they wished to rely.
7. The Applicant confirmed to the Tribunal on 18 October 2019 that it had complied with the directions relating to the provision of notice to the leaseholders.
8. No reply forms or other documents have been received from any leaseholders.
9. The relevant legal provisions are set out in the Appendix to this decision.

### The background

10. The property which is the subject of this application consists of a house of three stories and a basement which has been converted into 5 flats.
11. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

### **The Lease**

12. The sample lease provided clearly allows for the Applicant to seek to recover costs of the repair of the roof as a service charge. Clause 4(2)(a) requires the tenant to make a payment of a maintenance charge which is defined as a contribution towards the landlord's expenditure incurred in carrying out the obligations in clause 5 of the lease. Clause 5(2)(i) includes the obligation to maintain the roof of "the building" - which is defined in the recitals as being the property in question.

### **The Issues**

13. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs will be reasonable or payable.

### **The Applicant's Case**

14. The Applicant's case is that they were notified of a leak into the laundry room ceiling of flat 4 on 17 September 2019. Builders were appointed and carried out an inspection on 20 September. This inspection revealed that the leak was coming from a crack in the roof which urgently needed to be repaired to prevent further water ingress. The high-level flat roof is also due to be replaced to ensure that the flats below are free from water ingress.
15. On 23 September 2019 the Applicant was notified that the laundry room ceiling in flat 4 had collapsed. Emergency repairs were carried out by Sinclair Builders on the same day at a cost of £1,000. This application was made 3 days later. The same day a Part 1 notice under section 20 of the Act was issued. This included a schedule of proposed works to replace and recover the damaged and leaking main rear high level flat roof areas and other associated areas to ensure that the flats below are free from water ingress.
16. The Applicant's case is that the roof is leaking badly, the leak has caused damage and should the leak continue there will be further damage.

### **The Respondent's Case**

17. As previously explained, no objections or comments have been received from any leaseholders.

### **The Tribunal's Decision**

18. The Tribunal is satisfied that the consultation requirements should be dispensed with. It is satisfied that the roof is in need of urgent repair. It accepts that leaking has caused damage to flat 4 and that further leaking is likely to cause further damage, and that continuing the section 20 consultation would extend the waiting time for the necessary works to be undertaken.
19. The Tribunal is satisfied that the leaseholders have been notified of the application and bears in mind that there has been no objection from any of them to it. It also bears in mind the limited scope of the issue before it.

20. In all the circumstances the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

**Name:** Tribunal Judge S.J.  
Walker

**Date:** 7 November 2019

### **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

### **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 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 or 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
  - (b) to obtain estimates for proposed works or agreements,

- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements
- (6) Regulations under section 20 or this section
- (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.