FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/LDC/2019/0066**
Property	**:**	**143 Nelson Road, London N8 9RR.**
Applicant	**:**	**143 Nelson Road Ltd.**
Representative	**:**	**Mr. Andrew Boyd.**
Respondent	**:**	**Various leaseholders as per the application.**
Representative	**:**	**In person.**
Type of application	**:**	**Under S.20ZA of the Landlord & Tenant Act 1985. The landlord seeks dispensation from the requirements to consult in relation to qualifying works.**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Ms. S. Coughlin.**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**17 June 2019.**

DECISION

Decisions of the tribunal

(1) The tribunal grants dispensation from the requirement to consult leaseholders in relation to qualifying works to the front garden of the property, including demolition of the existing brick wall, replacing the wall and installation of railings, a gate and construction of a garden area behind the wall.

(2) The tribunal does not determine the costs of the works undertaken by the landlord are reasonable or payable by any of the leaseholders, this would include whether it would be reasonable for the landlord to pay for the works from an existing maintenance fund.

The application

1. By an application dated 30 April 2019, the applicant seeks dispensation from the requirements to consult leaseholders in relation to qualifying works to the main front garden area of the property. It is understood from the application that the works involved the renewal of the boundary wall, improved drainage works and the formation of a garden area to the front of the property. .

2. The applicants say that, since 2008 the three leaseholders had been contributing £100.00 per month each to a service charge to accumulate funds in order to carry out various works of significant financial outlay that had been agreed on. The applicants say that the original leaseholder of Flat C agreed to the works, and that when this flat was assigned, solicitors enquiries were received relating to major expenditure. The applicants responded to confirm that works in the order of £6,700.00 plus VAT would be taking place and that further quotations would be sourced.

3. The respondent states that those quotations were never provided, and as such the consultation procedures were not properly complied with.

4. The landlord now seeks dispensation from the requirements to consult following various disputes over service charge payments since 2016. The relevant legal provisions are set out in the Appendix to this decision.

The determination:

5. Directions were issued by the tribunal on 7 May 2019 which required any party who opposed the application to provide a bundle of documents on which they wished to rely in support of their case, including a statement of case. The leaseholders were also required to

provide evidence, of what they might have done differently, if the landlord had complied with the statutory process.

6. The applicants and one respondent produced a bundle. The applicants set out the background to the works; that the front area was discharging water onto the adjacent property and the front step area was too high. Copies of quotations and a spreadsheet of the various payments made were included within the applicants' bundle. The respondent provided a statement of case but no evidence on which they wished to rely.

7. Although the tribunal considered that the quotations provided by the applicant were inadequate in that one did not contain the name and address of the contractor and the second did not follow the specification of works that had been produced we must consider whether the respondent has been prejudiced by the actions of the landlord. The respondent did not address the issue of prejudice, and in the absence of any evidence to the contrary, the tribunal considers that none was suffered. The respondent also did not address the issue of what action would have been taken if the landlord had complied with the requirements to consult.

8. l documents provided to the tribunal are somewhat inadequate, in that one quotation does not bear the name of the contractor, nor who prepared the specification. The quotation supplied by the chosen contractor does not address the specification of works and it cannot be guaranteed that the contractors were pricing against the same specification of works. However, this is not a matter for a S.20ZA application.

9. In addition, the respondent has not provided any evidence to suggest the works were not undertaken, nor have they produced any evidence to show the works was not required.

10. In the circumstances, without deciding on liability to pay or reasonableness of the charges, the tribunal considers in the circumstances that dispensation from the requirements to consult should be given to the applicants.

Tribunal: Ms. A. Hamilton-Farey Date: 17 June 2019.

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).

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, about 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 considered 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 way it is payable.

(2) Subsection (1) applies if 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 way 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 paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be considered in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by 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 considered 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 about proceedings before a court, residential property tribunal or the Upper Tribunal, or about arbitration proceedings, are not to be regarded as relevant costs to be considered 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or about the grant of approvals under his lease, or applications for such approvals,
  (b) for or about the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) about a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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 way it is payable.

(2) Sub-paragraph (1) applies if any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a manner, or
(b) on evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).