



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

**Case Reference** : **LON/00AW/LDC/2020/0082**

**HMCTS Code** : **P:PAPERREMOTE**

**Property** : **Cranmer Court, Whitehead's  
Grove, London SW3**

**Applicant** : **Cranmer Court (Chelsea) Tenants  
Limited**

**Respondents** : **The leaseholders of the flats within  
the property**

**Type of Application** : **Application under section 20ZA to  
dispense with consultation  
requirements for a scheme of  
Major work**

**Tribunal Members** : **Judge Daley  
Ms A. Rawlence MRICS**

**Date and venue of  
Paper Determination** : **23 September 2020 Paper  
Determination dealt with remotely**

**Date of Decision** : **23/09/20**

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**DECISION**

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Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper].

### **Decision of the tribunal**

- i. The tribunal grants dispensation in respect of the major works relating to the supply of the water to the commercial units within the building known as Cranmer Court.**
- ii. The Tribunal makes no order for the cost occasioned by the making of the application.**

### **The application**

1. The applicant by an application, made in May 2020 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from part of the consultation requirements imposed on the landlord by section 20 of the 1985 Act<sup>1</sup>.
2. The premises which are the subject of the application are a substantial block in Chelsea comprising 245 residential units on what is described as an island site which incorporates 10 retail units at ground floor level.

### **The Background**

3. This application was made in May 2020 during the Coronavirus lockdown; as a result, there was a delay in this matter. Directions were given in writing on 23 July 2020, setting out the reason for the delay and setting out steps to be taken by the Applicant, (including serving the directions on the respondents) for the progress of this case.
4. The Directions at paragraph C stated that -: "...The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable."
5. The Directions also provided that -: *Those leaseholders who oppose the application must by 28 August 2020 -: complete the attached form and send it by email to the Tribunal; and*
6. *Send to the landlord by email or post a statement in response to the application with a copy of the reply form. They should send with their statement copies of any documents upon which they wish to rely.*

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<sup>1</sup> See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

7. The Directions also provided that the application would be determined on the basis of written representations in the week commencing 21 September rather than proceeding to a hearing. However, the parties were informed that they could request a hearing by 4 September 2020. No request for a hearing was made and the Tribunal was satisfied that there was sufficient evidence before the Tribunal so that the matter could be dealt with as a paper determination without any injustice to any party

### **The Applicant's case**

8. The application was made on behalf of the landlord by D&GBM who are managing agents. In a letter dated 10 September 2020 and in the application, details were provided about the nature of the building, the key parties and why this application was considered necessary.
9. In brief, the managing agents retained consultants QuinRoss Consultants Limited ("QuinRoss") to act as M&M consultants on a major works project, a water distribution pipework replacement currently being undertaken at the building. This work was necessary as the pipework which was installed in the 1930s was in poor repair. These works which have already been consulted on with an estimated cost of £5million are expected to be completed in early 2021.
10. There are 10 retail units on the ground floor and these units are current on the same water distribution circuit as the residential block. This means that any disruption to the residential blocks affects the commercial units. One of the units at 65/71 Sloane Avenue is let to Starbucks, who require a constant supply of water, as any interruption would have a detrimental impact on their business.
11. The freeholder and the head lessor of the commercial units proposed that the commercial units would be removed from the residential units and each unit would have its own metered water supply. This would simplify the system for payment of water and would ensure that each unit was paying for its own consumption.
12. QuinRoss were instructed to investigate the feasibility of separating the water supply to the individual commercial units. Thames Water were approached in 2019, and provided an outline of the cost for the work. However, QuinRoss were asked to tender the works to other firms to obtain comparable cost. On 29 November 2019 at a meeting QuinRoss confirmed that they had asked 5 firms to tender for the work.
13. On 5 December 2019 a notice of intention was sent the leaseholders setting out the proposals concerning the work. On 9 December all five firms declined to tender citing the practical difficulties. Thames water confirmed their willingness to undertake the work and provided a quotation on 11 August 2020 the quotation was £64,100 plus VAT.

14. An application was made to the Tribunal and directions given. On 13 August a leaseholder respondent indicating that they did not accept that the inability of Quinn Ross to identify bidders did not mean that they did not exist. The leaseholder declined to comment further and did not send objections to the Tribunal.

### **The tribunal's decision and reason for the decision**

15. The Tribunal having considered all of the circumstances in this case, it noted that no information was provided concerning urgency, and that the sole reason appears to be that only one contractor has been identified given this consultation would serve little purpose.
16. The Tribunal has not been informed of any potential problems that the work would cause with the supply which would make the work urgent, however the tribunal has considered that there may be an advantage to undertaking this work whilst other major work is on-going and that there may be a saving to the leaseholders in avoiding the cost of consultation where there are few options for the work.
17. The Tribunal has considered the commercial lease and the residential lease. The Tribunal noted that its jurisdiction in this matter is somewhat limited and the scope is set out in Section 20ZA and as discussed by the court in *Daejan –v- Benson (2013)* which requires the Tribunal to decide on whether the leaseholders would if dispensation is granted suffer any prejudice. Although the Tribunal does not find that there is any prejudice to the dispensation being granted,. The Tribunal has not determined the scope of the repairing covenant in the lease. It is for the landlord to satisfy themselves of this and to determine the proportion payable by the tenant prior to undertaking the work. Nothing in the Tribunal's decision deals with the reasonableness or payability under the lease of the work in issue.
18. Further the Applicant **shall within 28 days** provide the Respondents with information of the full scope of the work, the provisions within the lease under which the work is carried out and if the work is within the scope of the lease the contribution to the costs of the work to be paid by each leaseholder.
19. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
20. No applications were made for costs before the tribunal.

**Judge**

Ms Daley

**Date**

24 September 2020

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 27A**

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.]

1. **S20ZA Consultation requirements: supplementary**

- (1) Where an application is made to a leasehold valuation 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 which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.