



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

Case Reference	:	LON/00AH/LDC/2021/0160
Property	:	43 Whitehall Road, Thornton Heath, Surrey, CR7 6AF
Applicant	:	Southern Land Securities Ltd.
Representative	:	Together Property Management
Respondents	:	The Leaseholders named in the list attached to the application
Type of Application	:	For the determination of an application for dispensation from the statutory consultation requirements
Tribunal Members	:	Tribunal Judge S.J. Walker Mr. A. Parkinson MRICS
Date and venue of Hearing	:	Decided on the Papers
Date of Decision	:	26 October 2021

DECISION

Decision of the Tribunal

The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of repairs to the rear elevation of the property.

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 the rear elevation of the property.

2. The application was made on 4 June 2021. It stated that water had penetrated beneath the tiles covering the rear elevation of the property beneath the bedroom wall of the top floor flat causing the wall to bulge outwards and placing it at risk of failing completely.
3. According to the application the remedial works have been carried out and a retrospective dispensation is sought. The Applicant's bundle shows that the Respondents were informed of the need to carry out works and that an application would be made for a dispensation order on 26 May 2021 and that details of the work to be undertaken were provided on 4 June 2021 (see pages 17 and 18 of the bundle).
4. Directions were first issued on 12 July 2021 but these were not complied with. Further directions were issued on 9 September 2021. They provided that the Tribunal would determine the application on the papers in the week commencing 25 October 2021 unless either party made a request for an oral hearing by 11 October 2021. 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.
5. The directions also required the Applicant to send to each of the leaseholders a copy of the application and a copy of the directions by 20 September 2021 by e-mail, hand delivery or first class post, and to display a copy of both in a prominent place in the common parts of the property. They were also to confirm by 22 September 2021 that this had been done.
6. The Applicant confirmed to the Tribunal on 20 October 2021 that the direction requiring notice to be given to the leaseholders of the application and directions was complied with on 9 September 2021. Although the Applicant was late in confirming that this had been done, the Tribunal is satisfied that adequate notice of the application and how to object to it has been given to the Respondents.
7. Under the terms of the directions, any leaseholders who opposed the application were required to notify the Tribunal by way of a reply form by 4 October 2021 and to send to the landlord a statement in response to the application by the same date.
8. No such replies were received by the Tribunal and no other documents have been received from any of the Respondents.
9. The relevant legal provisions are set out in the Appendix to this decision.
10. 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 background

11. The property is a semi-detached house built in about 1910 which has been converted into three self-contained flats.

The Lease

12. A sample lease in respect of flat 43A Whitehall Road was provided. This shows that flat A was let on 3 June 1988 by Vernon Michael Leslie Purcell and Marjory Elizabeth Bromwich to Michael and Sonia Barrett for a term of 99 years from 25 March 1988.
13. By clause 4(4) of the lease the tenant is liable to pay the service charge set out in the Fifth Schedule. This includes the costs of keeping the main structure of the building in good and substantial repair.
14. No evidence of title was produced but no issue has been raised as to the right of the Applicant to make this application and there was no suggestion from any of the Respondents that the terms of their leases did not permit the Applicant to recover their costs of repairing the rear elevation of the property.

The Issues

15. 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

16. The Applicant's case is that they became aware on 25 May 2021 that water had entered under the tiles on the rear elevation beneath the window of the top floor flat and that this had caused the wood beneath the tiles to fail. The wood was bulging outwards and was close to failing completely with a risk that the tiles would fall from the elevation. The Applicant instructed a contractor who erected scaffolding and inspected the elevation. On 4 June 2021 they produced a quotation in respect of the removal of the tiles for re-use, the removal of all membranes, roof tile battens, chip board substrate and defective lead flashings and aprons, the supply and fitting of replacements for these and the refitting of the retained tiles. The quoted sum was £5,295 plus VAT. This would exceed the limit for the costs of works without consultation.
17. Notice of the proposed works and the terms of the quotation was given to the leaseholders on the same day.
18. The works were duly completed by the contractor and an invoice was provided dated 2 August 2021 which was for the same sum as quoted.

The Respondent's Case

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

The Tribunal's Decision

20. The Tribunal is satisfied that the consultation requirements should be dispensed with. It is satisfied that the rear elevation of the property was in urgent need of repair.
21. 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. The purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. There is nothing before the Tribunal to suggest that the leaseholders would suffer any prejudice if this application were granted.
22. 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: 26 October 2021

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.