FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LSC/2020/0261**
Property	**:**	**Link House, 193-197 Bow Road, London E3 2TD**
Applicant	**:**	**Link House Bow Limited**
Representative	**:**	**Karslakes Solicitors**
Respondents	**:**	**The leaseholders of the Property**
Representative	**:**	**Mr Paul Sweeney of Counsel (just representing Mrs Islam)**
Type of Application	**:**	**Supplemental cost application**
Tribunal Members	**:**	**Judge P Korn** **Mr S Mason FRICS**
Date of Decision	**:**	**11th March 2021**

SUPPLEMENTAL DECISION ON COSTS

Decision of the tribunal

The tribunal refuses the cost application.

The background

1. This application is supplemental to applications (the "**Main Applications**") made by the Applicant for (i) a variation of the leases of the flats within the Property, (ii) a determination as to the reasonableness/payability of certain service charges and (iii) dispensation from compliance with the statutory consultation requirements in respect of certain major works.

2. The tribunal's decision on the Main Applications was issued on 2nd February 2021.

3. One of the Respondents, Mrs Daulat Islam (joint leaseholder of Flat 23), has now made a cost application pursuant to section 20C(1) of the Landlord and Tenant Act 1985 ("**Section 20C(1)**"), with the authority of her joint leaseholder.

Written submissions on behalf of Mrs Islam

4. Counsel for Mrs Islam states that the Section 20C(1) application is made in respect of costs incurred by the Applicant in relation to all three of the Main Applications.

5. In relation to the section 35 lease variation application, he states that it was the Applicant who drafted and made provision for the terms of each of the leases at the development and that Mrs Islam had no knowledge of how the service charge provisions had been drafted in respect of the remaining leases. As such, she should not be penalised by the imposition of any charges incurred by the Applicant in bringing the section 35 application.

6. In relation to the service charge application, there had been no objection to the service charges and he submits that the application was premature. Whilst it may convenient for the Applicant to obtain the declaration sought for its own purposes, it should not be at the cost of Mrs Islam who raised no objection.

7. In relation to the dispensation application, he states that the Applicant made no attempt whatsoever to consult the tenants in respect of the works conducted, and the statement of case refers to the works as essential but not as urgent. The Applicant should not be entitled to recover the costs of an application made as a result of its failure to follow the statutory regime when it had every opportunity to do so.

Written submissions on behalf of Link House Bow Limited

8. The Applicant's solicitors state that each of the Main Applications has been successful. They also note that the Applicant is a residents' management company with no source of income other than the service charges.

9. In relation to the section 35 lease variation application, they state that the Applicant is not the original landlord and did not draft the leases. As regards the section 35 application itself, the service charge recovery provisions did not in aggregate add up to 100%. The Applicant is proposing to embark on a phased programme of major works, and it was considered essential to resolve the discrepancies concerning the service charge percentages to ensure that the service charge costs can be recovered in full.

10. In relation to the service charge application, they submit that the application was not premature. It concerned the proposed budget for the period ending December 2020, which includes provision for proposed major works. The budget for the period ending December 2020 was £173,100.00, which amounts to £5,968.97 per leaseholder. This is significantly greater than the service charges demanded in recent years that have not included provision for major works. It was reasonable for the Applicant to request a declaration to ensure that it could recover these costs before proceeding with the proposed works.

11. In relation to the dispensation application, the tribunal has determined that there was good reason not to consult and that it was reasonable to dispense with the consultation requirements. Mrs Islam did not object to the dispensation application in principle nor did she make any submissions in respect of that application at the hearing on 18th January 2021. She cannot now make submissions that the works were not urgent or that the Applicant had time and opportunity to consult.

The tribunal's analysis

12. Section 20C(1) provides as follows:-

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 leasehold valuation tribunal or the First-tier 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.

13. As noted by Counsel for Mrs Islam in his written submissions, the tribunal has wide discretion in reaching its decision on an application under Section 20C(1).

14. The Applicant has been successful on all of the Main Applications, and whilst it is not impossible to make a Section 20C(1) cost order against the Applicant in such circumstances, it would be unusual to do so.

15. In relation to the section 35 application, the Applicant has made the point that it was not responsible for the original drafting errors as it is not the original landlord. We are satisfied that it was appropriate for the Applicant to make the application to regularise the position and we consider that the proposed major works programme rightly gave added impetus to the need to ensure that the service charge recovery regime worked properly. It is not a question of penalising an individual leaseholder by passing on the costs associated with the application; rather it is to the benefit of all leaseholders – particularly in the context of a building run by a residents' management company – that an obviously flawed service charge regime is corrected.

16. In relation to the service charge application, in our view the Applicant's decision to make this application was appropriate in the circumstances. It related to a much larger than usual budget and it made sense to seek approval for it whilst also applying to the tribunal on other matters. And whilst this point is relevant to all three of the Main Applications, it is right to emphasise particularly in the context of the service charge application that the Applicant is a residents' management company with no source of income other than the service charges and that it was appropriate for it to take prudent steps to ensure that a greatly increased budget was considered to be reasonable and therefore recoverable.

17. In relation to the dispensation application, Mrs Islam now appears to be seeking to argue points not raised by her in response to the dispensation application itself. She did not object to the application for dispensation and cannot now argue that the Applicant's failure fully to consult was easily avoidable and/or caused her prejudice, if indeed that is a point that she is now making or implying. We have already determined, on the basis of the evidence that was before us, that there was good reason not to consult and that it was reasonable to dispense with the consultation requirements, and it would be curious to make a cost penalty against the Applicant – a residents' management company – in those circumstances.

18. Therefore, we are satisfied that there is no proper basis on the facts of this case for making a Section 20C(1) order, and accordingly Mrs Islam's Section 20C(1) cost application is refused.

Name: Judge P. Korn **Date:** 11th March 2021

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.