



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

Case reference : **LON/00BJ/LDC/2021/0098**

HMCTS Code : **P:PAPERREMOTE**

Property : **72 Schubert Road,
Putney, London SW15 2QS**

Applicant : **Nigel Copsey**

Representative :

Respondents : **Lisa Attenborough
Flat 1, 72 Schubert Road,
Putney, London SW15 2QS**

Type of application : **An application for dispensation
from the consultation
requirements of s.20 Landlord and
Tenant Act 1985**

Tribunal member : **Judge D Brandler**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR**

Date of decision : **20th July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been 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 no-one requested the same and all issues could be determined on paper. The documents that I was referred to are in a bundle of 172 pages, the contents of which I have noted. Further emails dated 17/07/2021 and 19/07/2021 from both parties were considered by the tribunal but provided no further useful information to assist in this determination. The order made is described at the end of these reasons.

Decision

1. The Tribunal grants the applicant retrospective dispensation from the statutory consultation requirements in respect of works required at 72 Schubert Road, Putney, London SW15 2QS ("The building") to carry out works to repair a water leak into the 3rd floor flat roof.
2. Dispensation is granted on the condition that the applicant is to bear its own costs of this application, which should not be passed on to leaseholders.

Background to the Application

3. The tribunal did not inspect the property as it considered the documentation and information before it in the appeal bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
4. This has been a paper hearing which has been consented to by the parties. The tribunal had before it an electronic/digital trial bundle of 172 pages of documents prepared by the applicant, in accordance with previous directions.
5. The applicant landlord seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
6. The applicant has carried out works to repair a leak from the flat roof to the rear of the building. The leak was reported on 21st June 2019 into flat 3 as water dripping continually over the length of the occupant's office space in the flat, onto his computer and printer equipment. The landlord applicant felt a responsibility to instigate a speedy repair to avoid damage to the interior of the flat, the building fabric and the occupier's personal property.

7. The building is a terraced house. As a terraced house the applicant states that a flat roof repair would be via a rear scaffold. The tribunal is told that builder working next door in no. 74 had just finished constructing a contiguous flat roof using a rear scaffold. When approached by the applicant, that builder agreed to do the work which included stripping off the old leaking felt roof covering and replacing it with a new GRP membrane.
8. To minimize disruption which would have been caused by taking scaffold through flat 1, the builder would bring the scaffold equipment in via no.74 by removing and then reinstating a fence panel. However flat 1 did not agree to the erection of scaffolding in their garden.
9. The builder took advice and suggested access via a front scaffold with high level gantry over the roof. A price was agreed and the work was executed in that way. The cost of the works was £13,560 as evidenced by the service charge demand due on 01/01/2020 [21] . The scaffolding was erected on 27/05/2019 and the works were completed by early September 2019.
10. A roof report was included with the application. It is undated and unsigned. It has been produced by Copsey Engineering Ltd. The applicant is a structural engineer and as the report is written in the first person in relation to contact with the respondent and the builder, it is assumed that the report was prepared by the applicant. [13]

The Property

11. 72 Schubert Road is a 3-storey terraced house. It was constructed in 1886 and was converted into 3 flats in 1989. The main roof is of sloping tiled construction at the front. At the rear the sloping tile roof runs down onto an area of flat roof as shown at paragraph 2.1 of the roof report [13].
12. The applicant holds the freehold interest of the building as well as the long leasehold interests for flats 2 and 3. The leases of each flat are said to be on the same terms. The lease for the ground floor flat has been provided. By the terms of the lease, the Lessor applicant must by Clause 6(3) *“Maintain in good and substantial repair the structure and exterior of the building*” and the Lessee respondent must by Clause 5 *“pay to the lessor by way of additional rent a rateable proportion of the expenses and outgoing s more particularly set out in the Firth Schedule hereto properly incurred by the Lessor (hereinafter called “the Service Charge”)*
13. Lisa Attenborough (“The respondent”) holds the long leasehold interest of flat 1.

The leaseholders' case

14. The respondent opposes this application on the following grounds:-

- (i) That although each stage of the s.20 consultation process has 30 days, she would have responded promptly, especially if the works were urgently required, and she would have worked with the applicant landlord to swiftly find a more cost effective and appropriate contractor to carry out the works. This she says is demonstrated by her response by email within an hour in her 'Supporting Documentation Appendix Two (A)'.
- (ii) That the landlord applicant has not provided evidence to prove that the works were urgent and/or to justify why the s.20 process was not complied with
- (iii) The respondent's partner received three alternative quotes within 24 hours of requesting quotes and those quotes were significantly cheaper than the quote obtained by the landlord applicant and were based on actual works carried out as per the report on the roof repair. There are two quotes included in the appeal bundle: (i) SW Roofing in the sum of £4800; (2) HH Building and Maintenance Services with various amounts included which amount to £3470 [61-65].
- (iv) That the roof works could have been carried out without a scaffold as per the three quotes obtained by her.
- (v) That the s20 consultation process is not optional and it is not open to the landlord applicant to decide when to comply with it. By his statement that 'the blind application of s20 in this case would have been damaging to the building and its occupants' is not correct. This statement shows that he had no intention of complying with the s20 process required by law
- (vi) Flat 1 has recently experienced a similar leak coming from the flat roof and contacted the landlord to ask for his assistance on 29/01/2021. At the date of her response, no reply had been received. She asserts that the Landlord applicant only reacts quickly to issues relating to the property which impacts his ability to collect rent from his tenants.
- (vii) Further assertions are made in relation to historic neglect to the building and has provided photographs to support this assertion.
- (viii) In relation to prejudice, the respondent tenant would have had the opportunity to provide alternative quotes, would have been able to see the estimates received by the landlord application, and would have been able to make observations about the proposed works and the estimates.
- (ix) Makes submissions in relation to case law included with her response.

15. The respondent further makes a request that should she or the applicant landlord make a s.27A application that her costs set out in paragraph (23) should be taken into account.

Reasons for Decision

16. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
17. Having read the evidence and submissions from the applicant and respondent and having considered all of the documents and grounds for making the application provided by the applicant, the Tribunal determines the dispensation issues as follows.
18. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
19. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
20. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;
 44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
 45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some

very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

21. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
22. The tribunal has considered fully the objections made by the respondent.
 - (i) While the tribunal do not doubt that the respondent would have responded promptly to a s20 consultation, this would still have delayed works which are said to be urgent. Water leak cases, if urgent, can cause considerable damage if there is a delay in remedying the same. A delay of two months may have caused considerable further damage.
 - (ii) The tribunal has been provided with assertions by the applicant that the leak was urgent although no condition report or photographs were provided to evidence that.
 - (iii) While the respondent's quotations were no doubt obtained in good faith, and are a fraction of the quotation accepted by the applicant, the tribunal questioned whether those providing the those had been able to visually examine or assess the works to be done and whether that would have made a difference to the quotation. No evidence appears to have been provided as to when those giving the alternative quotes would have been available to carry out the works.
 - (iv) In relation to roof works being carried out without scaffolding, there is nothing in the quotations provided to confirm that could be done on the 3rd floor of a building.
 - (v) It is acknowledged that the s20 consultation is a legal requirement, but the dispensation procedure under s.20ZA of the 1985 Act does provide for situations when this may cause delay in remedying an urgent problem.
 - (vi) The roof leak into flat 1 is not covered by this application to the tribunal.
 - (vii) Nor are historic issues of repair referred to
 - (viii) The Tribunal notes that respondent's position on prejudice which is dealt with further below
 - (ix) The Tribunal notes the submissions made in relation to the caselaw provided.
23. As stated above, the only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**

24. All of the issues raised by the respondent in relation to whether the costs for the works were reasonable can be raised by her in a separate application under s.27A of the 1985 Act and it is noted that she is aware of that provision by her reference to it. Many of the other issues raised by her in her response are similarly apparent challenges to reasonableness of service charges.
25. The tribunal took into account that the application asserts that an urgent leak required repair, that the applicant landlord resolved issues relating to access to avoid damaging the respondent's garden and noted the promptness in completing the works. However, there has been prejudice to the respondent in not allowing her to engage in the s.20 consultation, even though the quotations provided by her may not having taken into account all of the relevant criteria of the works.
26. The tribunal found that the prejudice to the respondent was insufficient to refuse this application for dispensation, as that would provide a windfall to her in relation to works that were clearly necessary.
27. The tribunal therefore make the following conditions of such dispensation
28. Retrospective dispensation is granted on the condition that the applicant is to bear his own costs of this application, which should not be passed on to respondent leaseholder.

Judge D Brandler

20th July 2021

APPENDIX 1
RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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APPENDIX 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—

- (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.

- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.