



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

Case reference : **LON/00AH/LDC/2022/0017**

**HMCTS code
(paper, video,
audio)** ; **V: CVPREMOTE**

Property : **77 Outram Road**

Applicant : **77 Outram Road Croydon Limited**

Representative : **Jury O'Shea LLP**

Respondents : **Sheetal Ladva (flat 1) Fox and Stevens
Property Services Limited (flat 2) Alex
Miller (flat 3)**

Representative : **Radius Law for lessees of flat 1 and 2**

Type of application : **To dispense with the requirement to
consult lessees about major works**

Tribunal members : **Judge H Carr
Ms Sarah Redmond MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **31st October 2022**

DECISION

Covid-19 pandemic: description of hearing

This matter was originally listed for a paper determination and was relisted as a video hearing as requested. The documents that the tribunal was referred to are in the original bundle of 268 pages and then an additional bundle of 75 supplementary pages, the contents of which the tribunal has noted. The order made is described at the end of these reasons.

Decision of the tribunal

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.
2. The dispensation from consultation is conditional upon the Applicant paying the Respondent's reasonable costs from the date of the Application to the date of service of the supplementary bundle. This figure will be determined by the Tribunal following receipt of submissions from the parties. Directions on how these submissions are to be made are set out below.

The application

3. Gemma Williams of Jury O'Shea LLP on behalf of the freeholder of the premises, applied on 28th January 2022 under s.20ZA of the Landlord and Tenant Act 1985, for dispensation from the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.
4. The application indicated that there were 2 sets of works for which dispensation was applied for
 - (i) repointing and repairs to brickwork (and associated scaffolding) and
 - (ii) repairs/replacement of an extension roof.
5. The brickwork repairs and repointing were completed by July 2021 and the roof works were due to be commenced at the time of the application. They were completed prior to the hearing of the application.
6. In the application it was explained that the reason that dispensation was sought in connection with the repointing and repairs to brickwork and the associated scaffolding was that a valid Notice of Estimates was not

served on the Respondents in advance of the works being completed as required by the consultation regulations.

7. The reason why dispensation was sought in relation to the repairs/replacement of the extension roof was because consultation would delay the works, risking further water damage to the property and increased costs.

Procedure

8. The Tribunal held a case management review of this matter on 3rd March 2022 and issued directions on the same date.
9. In those directions the Tribunal determined that the matter be determined remotely on the basis of the papers provided.
10. The directions gave an opportunity for any party to request a virtual hearing. A hearing was requested.
11. The hearing of the application was arranged for 16th May 2022 but had to be adjourned. The tribunal issued further directions on 16th May requiring the Applicants to provide further details of the process of consultation and of the roof repairs and providing an opportunity for the Respondents to serve a supplementary statement of case in reply. Those directions also determined that the hearing would be a virtual hearing.
12. The hearing took place on 6th September 2022. Ms Byroni Kleopa of Counsel appeared for the Applicant. Mr and Mrs Miller attended the hearing and Mr Miller gave evidence. Mr Richard Morris, Solicitor with Radium Law, represented the Respondents. Ms and Ms Ladva and Mr Fox, director of the 2nd Respondent both attended and gave evidence.

Determination

The background

13. The property is a Victorian semi-detached house which has been converted into three flats.
14. Mr and Mrs Miller of Flat 3 acquired the freehold of the building on or around 1st May 2020. All parties are agreed that the property was in a dilapidated condition at that time. No service charges had been demanded by the previous freeholder and no works had been carried out to the property in the recent past.
15. The property is in a conservation area, therefore works carried out to the property must be in accordance with local regulations.

16. It was clear to the tribunal that there was considerable animosity between the Applicants and the First and Second Respondents. Regardless of the outcome of this decision such animosity is not only unproductive but also expensive for all the leaseholders in the property. The tribunal urged the parties to consider whether relationships would be improved by instructing professional managing agents.

The Evidence

17. The Applicant gave evidence before the Tribunal as follows:

- (i) The application is for an unconditional retrospective dispensation of part of the consultation requirements prescribed under s.20 of the Landlord and Tenant Act 1985
- (ii) The Applicant submits that it would be reasonable to dispense with the requirement to consult because the Respondents have not suffered any relevant prejudice as a consequence of the Applicant's failure to comply with the requirements, and/or will not suffer any prejudice if an unconditional dispensation is granted.
- (iii) The application relates to two sets of works.
 - (a) Those works are set out in the Notice of Intention dated 17 September 2020
 - (b) The works contained in the Notice are as follows and referred to collectively as "the Works":
 - (1) Installation of scaffolding to front, side and rear elevation – Completed 21 September 2020
 - (2) Adaptation of scaffolding to side elevation – 21 September 2020
 - (3) Scaffolding to chimney – Completed 16 March 2021
 - (4) Repointing of brickwork to front of Property – 10 June 2021

- (5) Installation of Heliforce bars (repairs to side and front wall) – 3 June 2021
 - (6) Repointing of Chimney and main roof works – 16 July 2021
 - (7) Works to roof of extension including installation of scaffolding – Completed 17 February 2022
- (iv) In relation to the reopening of the Brickwork to the front of the house the Applicant says that it obtained three quotes for the works which it provided to the Respondents on 21 February 2021.
 - (v) The Applicant appointed AA Brickwork to carry out the works because it considered that AA Brickwork best met the needs with regard to cost, timing and competence.
 - (vi) In relation to the works to the roof of the extension the Applicant says that this work has now been completed at a cost of £5178.66. The applicant obtained 3 estimates of the works to the roof of the extension. The work was required urgently as there was a leak into the bedroom of Flat 2. The works were necessary as the roof was in a dilapidated state.
 - (vii) Following the consultation process would have delayed the works leading to further damage to the structure of the property or caused more cost in terms of internal repairs.
18. The lessee of Flat 1, Sheetal Kanwar and the lessee of Flat 2 Fox & Stevens Property Services Limited gave evidence opposing the application.
 19. They provided evidence of the history of the management of the property since the Applicant purchased the freehold in May 2020. They submit that there have been numerous issues regarding the conduct and the behaviour of the Applicants since they took over.
 20. The Respondents argue that the Applicant has chosen to deliberately ignore the guidance and procedures in connection with service charges and have consistently ignored the Applicants requests for additional quotes, for further information or to engage with the leaseholders in relation to the section 20 process.
 21. The Applicant makes the following submissions

22. For Works 1-6, the consultation process was carried out, albeit that the Notice of Estimates was defective, and the Respondents had the opportunity to make all the comments and points that they would have made had the Notice of Estimates been valid.
23. For Works 7 the Applicant obtained 3 quotes for the works. The Applicant argues that the works are appropriate as the roof was in serious need of permanent repair as water was entering the building. The Applicant argued that the costs were appropriate and fair and that if the Applicant had completed the consultation process before commissioning the works, there would have been a risk of further water damage and further expense for the Respondents.

The Law

24. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs (1) provides

‘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 agreements, the tribunal may make the determination **if satisfied that it is reasonable to dispense with the requirements**’ (emphasis added).

The tribunal’s decision

25. The tribunal determines to grant the application.

Reasons for the tribunal’s decision

26. The tribunal had some concerns about the application. The Applicant was fully aware of the tensions between the parties and the need for professionalism and courtesy about demands for money in relation to major works. Indeed there is a particular need for sensitivity as there had been no recent history of regular service charge demands. The Applicant quite properly is seeking to remedy a number of defects to the property but it requires sensitivity to change a culture from one of neglect to proactive management. Unfortunately communications between the Applicant and the leaseholders can frequently be characterised as at best assertive of the freeholder’s rights and position and what comes across is a sense of entitlement that whatever is demanded is reasonable and payable and an unwillingness to listen to the position of the Respondents or to meet with them to address their concerns.

27. The tribunal noted the extent of works covered in the Notice of Intention and that the notice of intention was dated 17th September 2020.
28. It also noted the lack of a surveyor's report in support of the work carried out. The Applicant said that a draft surveyor's report had been prepared. The tribunal was not clear what was meant by a draft report. It was not provided with a copy of that report and without seeing the instructions for that report it is very unclear what the surveyor was asked to do. No clear reason was given by the Applicant for not providing that information.
29. It also noted the failure of the Applicant to be open and transparent with the Respondents. Much of the dispute here may have been avoided if the Respondents had been kept fully informed. It notes that information about the quotations sought was provided in the supplementary bundle prepared by the Applicant. However that was not provided until after the case management hearing of 16th May
30. The tribunal agrees with the Respondents that if that information had been provided earlier there may have been no reason for the Respondents to oppose the dispensation application. The failure of the Applicant to be transparent earlier in the process is reflected in the tribunal's decision on costs below.
31. Nonetheless the tribunal determines that the works carried out were necessary and that the Respondents despite the defect in the consultation process for items 1 – 6 had sufficient opportunity to comment on the works.
32. The tribunal also agrees with the Applicant that the works to the extension roof were urgent. It does not accept that the Respondent suffered prejudice as a result of the non-compliance with the consultation requirements. Both the Respondents agreed that the work was urgent.
33. The tribunal does not accept that a patchwork repair could have been carried out quickly and that reduced costs would have resulted from the consultation procedures being properly carried out. It agrees with the Applicant that even a patch repair would have required scaffolding and therefore consultation, and that in the end no money would have been saved.
34. The tribunal does not accept that refusing to consent to the dispensation application because of the difficulties that the Respondents had with the previous set of major works is a valid reason for refusing consent. Many other aspects of the Applicant's management processes were raised by the Respondents, including difficulties around provision of keys and

around consents to sale. These matters are not relevant to the application before the tribunal.

35. In the light of the evidence provided to the tribunal the tribunal does not consider that the Respondents have discharged the burden of demonstrating relevant prejudice and determines that it is reasonable to grant the application sought. It is important that the Applicant notes that this decision does not mean that further applications for dispensation from consultation requirements will be favourably determined in relation to the notice of intention and the alleged draft surveyor's report.
36. **Both parties should note that this determination does not concern the issue of whether the service charge costs demanded in connection with the works are reasonable or indeed payable. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.**

Costs

37. In the leading case on dispensation from consultation, *Daejan Investments v Benson* [2013] UKSC 14 Lord Neuberger indicated that in certain circumstances granting dispensation would be conditional on the landlord paying the tenants' reasonable costs incurred in connection with the dispensation application.
38. In this application as the tribunal has made clear the Respondents suffered from a lack of information about the works at the time the application was made. It was therefore reasonable that the Respondents oppose the application at least until their concerns were addressed. The tribunal considers that sufficient information was provided by the Applicant at the time of service of the supplementary bundle. Therefore the application for dispensation is granted on the basis that the Respondents' reasonable costs up to that point are borne by the Applicant.
39. From the point of service of the supplementary bundle the tribunal determines that each party should bear its own costs and therefore makes a s.20C order that the Applicant's costs from that point should not be added to the service charge.
40. The tribunal is conscious that the parties have not had an opportunity to address it on costs. It therefore directs that the Respondents prepare a costs schedule from the date of the application to the date of service of the supplementary bundle together with a statement as to why those costs are reasonable. This schedule has to be provided to the Applicant

and the tribunal with 14 days of the date of the decision. The Applicant will have 14 days to provide comments on the Respondents' statement of reasonable costs. Those comments must be provided to the tribunal and to the Respondents. The tribunal will then make a determination on the amount of costs payable by the Applicant.

41. The tribunal would of course welcome the parties reaching an agreement on the amount of reasonable costs. If they do reach an agreement they must inform the tribunal so that the case file can be closed.

Name: Judge Carr

Date: 31st October 2022

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, 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 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 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 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 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) 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 20B

- (1) If any of the relevant costs taken into account 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 in connection with proceedings before a court, residential property 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.

- (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 in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with 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) in connection with 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 manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of 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 particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).