



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

**Case reference** : **LON/00AX/LDC/2019/0081**

**Property** : **The Watergardens, Warren Road,  
Kingston upon Thames, KT2 7LF**

**Applicant** : **The Watergardens (Kingston)  
Management Co Ltd**

**Representative** : **Written Application by Kinleigh  
Folkard and Hayward**

**Respondent** : **37 leaseholders as per the  
application**

**Representative** : **None.**

**Type of application** : **Application for dispensation from  
consultation requirements under  
s20ZA of the Landlord and Tenant  
Act 1985**

**Tribunal members** : **Mr A Harris LLM FRICS FCI Arb**

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

**Date of decision** : **22 July 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal grants dispensation from the consultation requirements under s20 ZA of the Landlord and Tenant Act 1985.

## **The application**

1. The Applicant seeks dispensation from the consultation requirements under s20ZA of the Landlord and Tenant Act 1985.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. A written application was made by Kinleigh Folkard and Hayward (KFH). The case was decided on paper and no appearances were made. The tribunal considered the written application form and the other documents supplied.

## **The background**

4. The property which is the subject of this application is a block of 37 flats held on long leases. The block was built in approximately 1988 with the external driveway, parking spaces etc constructed from a proprietary fibre reinforced concrete manufactured and laid by Bomanite.
5. A specimen lease has been provided. A list of leaseholders has been provided with confirmation from the management company that they have been notified of the proposed works. No representations have been received objecting to the scope of the works. The works appear to fall within the repairing covenants in the lease.
6. The proposed works are to repair or renew concrete which has worn away in heavily trafficked areas. It is proposed to use Bomanite for the repairs to match the existing material. As there is only one licensed contractor in the UK for this material it is not possible to obtain competitive tenders and therefore the Applicant seeks dispensation from the consultation requirements of section 20 ZA.

## **The tribunal's decision**

7. The tribunal grants dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

This does not affect the rights of challenge of reasonableness and payability of service charges under s27A of the Landlord and Tenant Act 1985.

**Reasons for the tribunal's decision**

8. The works are required to comply with covenants in the various leases. The tribunal recognises the unusual circumstances in this case but does not consider the leaseholders would be prejudiced by this decision as they have been consulted even if the precise form of the consultation is not in accordance with the regulations by not seeking competitive tenders. The leaseholders are aware of the position and have not objected.

**Name:** A Harris LLM FRICS FCI Arb      **Date:** 22 July 2019

## **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**

### **S20 Limitation of service charges: consultation requirements**

- (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.[\[FN1\]](#)

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151

### **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.[...] [FN1]

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151