



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

Case references : **LON/00BK/LSC/2020/0001
LON/00BK/LDC/2020/0001**

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

Property : **Abbey Court, Abbey Road, London,
NW8 0AU**

Applicant : **Abbey Court (Freehold) Limited**

Representative : **Wallace LLP**

Respondent : **Lessees and long sub-lessees at Abbey
Court as identified in the list
accompanying the application**

Representative : **N/A**

Type of application : **Liability to pay service charges and an
application to seek dispensation under
section 20ZA Landlord and Tenant Act
1985**

Tribunal members : **Judge Amran Vance
Mrs Helen Bowers BSc(Econ) MSc
MRICS**

Date of Decision : **28 May 2020**

DECISION

Covid-19 pandemic: description of hearing [

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 511 pages, the contents of which we have noted. Page numbers in square brackets and in bold below refer to pages in that bundle. Additional documents provided after the first day of hearing are referred to below. The order made is described in the decision. The parties said this about the process: that they were content with the procedure, although counsel for the Active Respondents had technical difficulties with his video connection on the morning of day one of the hearing, and therefore connected by telephone, joining by video in the afternoon.

Decision

1. the Applicant has complied with the statutory consultation requirements in respect of its intended Major Works to the subject building; and
2. the incurring of the costs for the Major Works is reasonable within the meaning of s.19(1)(a) and (2) of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the sum of £714,575.84 is payable by the respondents, in their apportioned shares, according to the provisions of their respective leases.

Background

3. These applications concern proposed external works (“the Major Works”) to Abbey Court, Abbey Road, London NW8 oAU (“the building”), a mansion block set over eight floors and comprising 24 flats.
4. The Major Works are set out in a tender specification **[181]** and accompanying Schedule of Works **[203]** and consist of the repair and redecoration of the front and rear elevations of the Building, and the full refurbishment of its flat and mansard roof areas, including:
 - (a) replacement of the main roof covering to the building, rain water goods, pigeon deterrent, three fresh water tanks, and part of the fire escape of the building;
 - (b) external re-pointing and making good masonry where necessary;
 - (c) external repainting; and
 - (d) provision of health and safety equipment.
5. On 23 December 2019, the tribunal received two applications from the Applicant freehold company seeking determinations that:

- (a) the lessees in the building are liable to contribute towards the estimated costs of proposed major works to be carried out to the building in the sum of £714,575.84;
 - (b) the extent and amount of the proposed major works are reasonable; and
 - (c) it had complied with the statutory consultation process under section 20 of the 1985 Act; or in the alternative, that dispensation from those requirements be granted.
6. The only lessees who opposed the applications are Duelfield Limited and Duellaloft Limited, the leasehold owners of flats 1, 1a, 2, 22 and 23 ('the Active Respondents'). Their objection to the works arose from their asserted intention to construct a further mansard floor to the building, which would involve the removal and replacement of most of the current roof, and any replacement. They argued that as the roof was going to be replaced by the Active Respondents (or one of its associated companies) at its own cost, it could not be reasonable to expect lessees to contribute, at this stage, towards the cost of a new roof that was shortly to be replaced. Although the Active Respondents initially maintained that the statutory consultation requirements in respect of the Major Works were not complied with, they did not resist the Applicant's application for dispensation.
7. The tribunal issued directions on 3 January 2020, and fixed a hearing for 6 April 2020. However, in light of government advice and restrictions imposed because of the Covid-19 pandemic, the hearing of the application took place by remote video technology on 11 May 2020. The Applicant was represented at that hearing by Mr Dovar, of counsel. Mr Hill, also of counsel, attended on behalf of the Active Respondents. At that hearing we heard submissions from counsel and evidence of: Mr Dunitz (a director of the Applicant company and the registered sub-lessee of Flat 21 situated on the top floor of the Building; Mr Tate (a director of Tate Residential Limited, the managing agents acting on behalf of the Applicant in respect of the building); and Mr Lorimer (a property manager acting for Rodel Holdings Limited, the parent company for the Active Respondents). Also present at the hearing were expert surveyors instructed by the parties, Mr Quinlan for the Applicant and Mr Way for the Active Respondents.
8. The hearing lasted for a full day and was adjourned with directions for the provision of further expert evidence, and a joint statement of the experts. It was to resume on 28 May 2020, by way of video hearing, but late in the afternoon of 27 May 2020, the tribunal was notified that agreement had been reached between the Applicant and the Active Respondents. A draft consent order was submitted and was discussed by the tribunal, and both counsel, at a short video hearing on the morning of 28 May 2020. As the Applicant still sought determinations from the tribunal on its applications, despite the agreement reached with the Active Respondents, this reasoned decision is required.

The s.20ZA Dispensation Application

9. The Applicant's position is that it carried out the following statutory consultation in compliance with part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003/1987:
 - (a) it served an initial Notice of Intention on lessees dated 20 June 2018 **[269]**;
 - (b) it sent a Notice of Estimates to lessees dated 21 October 2019 **[270]**;
 - (c) two observations were made in response to the Notice of Estimates, and the Applicant had regard to them before deciding to contract with the lowest estimate received, that from Rosewood Limited in the sum of £714,575.84
10. We are satisfied that the statutory consultation requirements have been complied with. No substantive challenge to the contrary is set out in the Active Respondents' statement of case **[285]**, and no other lessee has argued otherwise.
11. The Notice of Intention described, in general terms the works proposed to be carried out, explained the reasons why they were considered necessary, and invited observations and nominations of suitable contractors for consideration. It stated that the works were likely to cost in the region of £715,000.
12. The Notice of Estimates summarised 53 observations made in response to the Notice of Intention and the Applicant's responses to the same, provided details of estimates received from four contractors, gave notice of a time and place for those estimates to be inspected, and invited observations from lessees.
13. Both the Notice of Intention and the Notice of Estimates appear to us to meet the statutory requirements set out in the 2003 Regulations, and no lessee has argued to the contrary. Nor has any lessee suggested that the Applicant failed to have regard to observations following the Notice of Estimates, before appointing Rosewood Limited as its contractor. We therefore determine that the statutory consultation requirements were met and that no determination is required in respect of the dispensation application.

The Major Works

14. The Applicant obtained a detailed report on its specification and tender from TMD chartered surveyors, dated 11 January 2019 **[227]** in which it was concluded that the specification prepared for the Applicant had been prepared in a professional manner.

15. In these applications, no lessee has raised any objections to the Major Works set out in the specification, other than the Active Respondents, whose only objection concerned the intended roof works. We note that the Active Respondents have already paid the Applicant what they estimate to be the proportion of the service charge demanded in respect of the other works, around 80% of the demand, after calculating that the works to the roof constituted around 20% of the service charges demanded.
16. The Applicant's contention that urgent roof repairs are required is supported by a report on the condition of the main roof, prepared by Mr Quinlan of TMD chartered surveyors, dated 12 March 2020 [397]. In section 6 of his report he concluded, having undertaken an inspection of the roof area, that the existing roof weathering is in a poor condition, and is at the end of its serviceable life. Due to the dilapidated condition of the roof weathering, he considered it unadvisable to continue to patch repair it on a reactive basis as this would be both costly and would be needed on a progressively more frequent basis. In his opinion, a comprehensive reweathering was required, which should coincide with the Applicant's planned external repair and redecoration works to the Building. This, he said, would avoid the additional significant cost of re-erecting scaffolding in the future for purely the roofing works. He also agreed that the roof works were an integral part of the proposed external repair and redecoration project, which should include comprehensive repairs and replacement to all elements of the roof, such as the mansard roof, dormers, rainwater goods, parapets, roof light and the like.
17. Mr Tate, in his witness statement, and in his oral evidence, asserted that the proposed roof works were needed to comply with the Applicant's repairing obligations to lessees, and that to delay the works would prove damaging to the Building, and cause the lessees to incur significant additional costs. In his statement, he explains that the dilapidated condition of the roof has caused ongoing roof leaks into the building, and he exhibits a schedule that, he says, shows a total of 23 roof repairs undertaken since 2012, of which 11 had been carried out since early 2018.
18. Mr Dunitz, in his witness statement, and in oral evidence, provided details of the history of repeated water penetration incidents since 2012, including ingress into, and damage caused, to Flat 21 purchased in 2012 as a home for his daughter, and her young family, together with the flats owned by the Active Respondents.
19. The expert surveyor for the respondents, Mr Way, has provided a report dated 30 April 2020 [452] in which he accepts that the flat roof with its associated details, upstands, flashings etc. is at or near to the end of its regularly serviceable life. He agrees that the most economic course of action would be for the roof covering to be replaced, which would include necessary associated works, such as repairs and replacement to upstands flashings weatherings and the like. He concurs that the work to the roof proposed by the Applicant would normally be the right course of action,

but given the Active Respondents' intention to construct a further mansard floor to the building, he suggests that the financially prudent course of action would be to undertake a further round of temporary or patch repairs, with a view to undertaking a permanent solution in 2021, when the outcome of the application for planning permission for the development of the mansard floor is known.

20. Having reviewed the TMD reports, the report of Mr Way, and having considered the witness evidence from Mr Tate and Mr Dunitz, it is clear to us that the roof to the building is at or near to the end of its serviceable life. We accept the evidence of Mr Quinlan, Mr Tate and Mr Dunitz that water penetration is an ongoing problem and conclude that replacement of the roof, rather than further patch repairs is a reasonable course of action for the Applicant to pursue.
21. As the Active Respondents have now reached agreement with the Applicant, and are no longer opposing the s.27A application, there is no need for us to address the objections raised by them, nor Mr Way's suggestion that the roof works should be delayed.
22. Further, given the lack of objection from any of the lessees to the remaining works comprising the Major Works, we see no reason to question the necessity, or scope, of the works. We also note that no lessee has raised any question as to their contractual liability to pay the sums demanded, or raised any other issue regarding the reasonableness of the sums demanded.
23. We therefore determine that the estimated costs for the Major Works, in the sum of £714,575.84 are payable by the lessees of the Building, in their apportioned shares, according to the provisions of their respective leases.

Name: Amran Vance

Date: 28 May 2020

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).