FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LDC/2020/0087**
HMCTS code	**:**	**P: PAPERREMOTE**
Property	**:**	**75-89 Lancaster Gate London W2**
Applicant	**:**	**The Lancasters Management Ltd**
Representative	**:**	**Mr A Chesser of Withers, Solicitors**
Respondent	**:**	**Leaseholders of 75-89 Lancaster Gate W2**
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 FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**20 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE,. A face-to-face hearing was not held because no-one requested the same, and all issues could be determined in on paper. The documents that the Tribunal were referred to are in a bundle of 528 pages and a supplemental bundle of 42 pages, the contents of which have been noted.

Decisions of the tribunal

(1) The tribunal grants dispensation from the consultation requirements under s20 ZA of the Landlord and Tenant Act 1985 to the extent set out in this decision.

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.

3. The application is concerned solely with the question of what dispensation, if any, should be given from the consultation requirements of s20 of the 1985 Act for works costing in excess of £250 per flat. It is not concerned with the reasonableness or payability of any service charges which may arise.

The hearing

4. A written application was made by Withers, Solicitors who have been appointed by the freeholder to make this application. The case was decided on paper and no appearances were made. The tribunal considered the written bundle of 528 pages in support of the application and the supplemental bundle of 42 pages submitted by Mr Avinash Vazirani objecting to the application.

5. The background

6. The property which is the subject of this application is a Grade II listed mansion block converted into 75 apartments and two leasehold houses. Although the address is given as Lancaster Gate, the property has frontages also to Leinster Terrace and Bayswater Road. The property comprises 15 terraced houses which are referred to by their original

numbering. Each of the "houses" has two facades with a flank wall at either end of the building.

7. The Applicant, in this case is a residents owned company limited by guarantee and is the freeholder. The directors of the Applicant are proprietors (or representatives of corporate proprietors) of long leases in the subject property. Each of the lessees in the property is a member of the Applicant.

8. In 2017 following a full consultation under section 20 of the Landlord and Tenant Act 1985 (the Act) the Applicant entered into a contract for the repair of the facades in the buildings. Once scaffolding had been erected and further investigations carried out it became apparent that there would need to be an increase of approximately 10% in the contract sum. Leaseholders were advised of this and no objections were received. A precautionary application was made to the tribunal under section 20ZA of the Act.

9. Dispensation was granted from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 by the tribunal on 4 July 2019 under reference LON/00BK/LDC/2019/0067.

The application

10. The application records that once the Lancaster Gate facade had been exposed it became apparent that there was substantial additional works to defects which were not previously discoverable and that more extensive facade works than originally envisaged were also required. In addition, costs have also increased due to delays caused by the Covid 19 pandemic. The total cost of the works including VAT and fees is now estimated to be £17,517,381.92. The works are being supervised by building surveyors, structural engineers and quantity surveyors.

11. It would appear from the application that extensive refurbishment and/or development works were carried out in 2012 and that some of that work is defective or covered up defects in the building. Additional works and cost which are now required or have arisen include

- render and masonry repairs
- an additional skim coat of lime render over the original render
- repairs to coping stones
- repairs to chimney flaunching
- repairs to windows surrounds
- works to the party wall with the adjoining Thistle hotel
- replacement of sliding wall ties
- additional preliminary costs

- contingency sum
- professional fees

12. The application includes a report dated 20 December 2019 prepared for the directors of the Applicant by quantity surveyors Arambol LLP setting out the additional works required and costings. The report also includes various photographs which support the need for additional work.

13. Leaseholders were advised of the increased costs as they were known at that time by letter dated 23 December 2019.

14. Consideration was also given to the potential cost of employing an alternative contractor in view of the increased scope and cost of the works. Arambol advised that the cost of the additional works would be of the order of £930,000 assuming an alternative contractor were brought in including the cost of duplicating various preliminary items and scaffolding.

15. In a report dated August 2020, Hockley and Dawson, consulting engineers advised that when the interior of the building was reconstructed inadequately, or incorrect restraints were installed to tie the facades to the internal structure to provide structural stability. The cost of this additional work was approximately £1.95 million.

16. Leaseholders were kept informed by email of the progress of the works and the need for a further application under section 20 ZA of the Act for dispensation from the consultation requirements. An application was made to the tribunal on 19 March 2020 which was delayed in being dealt with due to the lockdown arising out of the Covid 19 pandemic and an amended application was made in August 2020 based on the increased costs.

17. The tribunal issued directions on 12 October 2020 requiring leaseholders to be advised of the application and setting a date for determining the application on written representations.

Mr Vazirani's case

18. A letter from the tribunal dated 1 December 2020 records that for whatever reason Mr Vazirani only became aware of the application in the previous week. Although some of the issues raised by him appeared to be wider than the issues in the current application the tribunal directed he should be given an opportunity to state his case.

19. Mr Vazirani objects to the application as he considers the Applicant is shown a complete disregard for cost control generally and has incurred significant legal and professional expenses charged to the service

charge without following a section 20 process. He suggests legal costs have risen from £170,000 in 2017 to over £6.5 million to date but he has not been able to obtain full details. He considers the correspondence demonstrates the inability of the Applicant to control costs of a major project and to follow basic legal and accounting requirements and, when queried, refusing to answer questions in respect of costs being charged to leaseholders.

20. In relation to the current works, the Applicants "excuse" for dispensing with consultation requirements is the cost of delay and additional costs of scaffolding and hoists. These costs are being incurred without any consultation process. At each stage of increase in the scope of the works the Applicant has presented leaseholders with the choice of cost of delay or dispensation.

21. The Applicant has not demonstrated to leaseholders whether any competitive tenders were carried out for choosing any consultants or contractors or how their costs are reviewed and scrutinised. There is no transparency on how these advisers have been appointed and whether there are any conflict of interest between the directors, the agents of any service providers.

22. At the Applicant's AGM on 2 October 2020 the Applicant stated it could not be sure about completion dates which can only be confirmed as work progresses. It was thought that scaffolding should come down from number 89 onwards in the subsequent 2 to 3 months but two and a half months later no scaffolding has been removed which demonstrates the Applicant has no control over the works and therefore of the cost.

23. The Applicant made its application seeking dispensation on 27 August 2020 but has not done any due diligence on the figures provided by the contractors which make up the estimated cost. Mr Vazirani quotes from correspondence that the contractors claim is taken at face value but under investigation by the surveyors. This clearly indicates costs are being incurred without care and scrutiny.

24. The Applicant does not made any commitment to confirm that this is a complete and final schedule of work and therefore costs and that they will not make any further applications. The Applicant has a cavalier attitude to incurring costs.

25. Mr Vazirani requests that the tribunal rejects the application and requires a proper consultation process to be followed. He also seeks an order the Applicant is to refund costs improperly charged to the leaseholders or alternatively provide any other fair remedy which will ensure only fair costs are incurred in respect of the required works.

The tribunal's decision

26. 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 for the work set out in the application.

Reasons for the tribunal's decision

27. The scope of the works appears to fall within the landlords repairing covenants of the lease and the cost is recoverable under the service charge provisions, subject to any challenge under s27A of the Landlord and Tenant Act 1985.

28. The primary guidance on whether to give dispensation comes from the decision of the Supreme Court in Daejan v Benson which lays the down that the primary test is that of prejudice to the leaseholders.

29. The question for the tribunal on this application is whether it is reasonable to grant dispensation from the consultation requirements of section 20 and whether the leaseholders would suffer prejudice from a failure to follow the process. It is not an enquiry into the reasonableness or payability of any service charges. It follows therefore that Mr Vazirani's complaints about legal costs or the costs of the work are outside the scope of this decision.

30. The tribunal is satisfied that the leaseholders have been informed of the progress of works by letter and email and at these have been fully discussed at the AGM of the Applicant. The application is transparent as to the reasons for the increases in cost and the steps being taken to control them.

31. The tribunal has some sympathy with the position in which the Applicant and leaseholders find themselves in uncovering additional work, but they are professionally advised and seeking to remedy defects not of their making. However, the tribunal is not satisfied on the evidence before it that going through a section 20 consultation with its attendant delay would produce a different outcome.

32. The tribunal therefore grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements of section 20.

Name: A Harris LLM FRICS FCIArb **Date: 20 January 2021**

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