



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

Case Reference : **LON/00BJ/LDC/2020/0212**

HMCTS Code : **P:PAPERREMOTE**

Property : **15 Hendon Road,
London SW18 2DQ**

Applicant : **Wandsworth Borough Council**

Respondents : **(1) Ms Morgan Lindsay Macquarrie
& Mr Michael Christopher
Melanson – Flat 15A (2) Mrs Gillian
V Hughes - Flat 15B**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for works to the
drainage system**

Tribunal Member : **Mrs A Rawlence MRICS**

**Date and venue of
Paper Determination** : **16 March 2021,
decided on the papers.**

Date of Decision :

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 it was not practicable, and all issues could be determined on paper.

Decision of the tribunal

- I. The tribunal grants dispensation in respect of the drainage works to the premises known as 15 Hendon Road, London SW18 2DQ.**
- II. The Tribunal orders that details of the cost together with an estimate of the service charges payable by the leaseholders shall be provided to the leaseholders within 28 days, if not already done so.**

The Application

1. Wandsworth Borough Council ('The Applicant') by an application dated 9 November 2020 sought retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('The Act') from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. 15 Herndon Road, London SW18 2DQ ('The Property') which is the subject of the application is a converted building of 2 self-contained flats.

The Background

3. Directions were given in writing on 7 December 2020, for the progress of this case.
4. By **21 December 2020** the Applicant was to send to each of the leaseholders by email, hand delivery or first-class post, copies of the application form (excluding any list of respondents' names and addresses) and these directions;

Display a copy of both in a prominent place in the common parts of the Property; and

By **11 January 2021** send an email to the tribunal at London.Rap@justice.gov.uk to confirm that this has been done and stating the date(s) when this was done.

5. Those leaseholders who **oppose** the application should by **25 January 2021**

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

- Complete the attached reply form and send it to the tribunal **by email** to both the landlord and to London.Rap@justice.gov.uk; and
 - Send to the landlord a statement in response to the application with a copy of the reply form, by post and by email where possible. They should send with their statement copies of any documents upon which they wish to rely.
6. The landlord may send to the respondents a brief reply to any statements in opposition received, by **8 February 2021**.
7. The landlord shall then by **22 February 2021**:
- Prepare a digital, indexed, and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application. If this is not possible, they should prepare the documents in Microsoft Word format, in numbered order (i.e. using a prefix of 01, 02, 03, etc);
 - The bundle should contain:
 - the application form and accompanying documents,
 - these and any subsequent directions,
 - documents upon which the landlord/applicant relies,
 - copies of any replies from the leaseholders and their evidence,
 - specimen copies of their leases, and
 - any relevant correspondence with the tribunal.
 - Send a copy of the bundle to each of the leaseholders who has sent a reply form to oppose the application, by email and, if requested, by post; and
 - Also send a copy of the bundle to the tribunal **by email** at London.Rap@justice.gov.uk.
8. The Directions also provided that the application could be determined on the basis of written representations. However, both parties were given the option of making a request for a hearing by 25 January 2021. Neither the Applicant nor the Respondents have requested a hearing, and the Tribunal are satisfied that there is sufficient information before it to enable it to decide this matter without injustice to any party without a hearing.
9. The Directions further stated that the Tribunal would not inspect the Property but, where necessary, will rely upon any plan, statements and photographs provided by the parties.

The Applicant's case

10. The Applicant is the freeholder of the subject property, a converted 2 storey residential property converted into two flats.
11. The Respondents are the lessees of the two flats in the property.
12. Sometime in the summer the Applicant was notified of a collapsed and leaking sewer drain at the property.
13. The property was inspected and the works to be carried out were:
 - Excavation down to a depth of approx. 3.5 mts and replacement of LCC trap
 - Service Supply pipes through the excavation area
 - High pressure water jetting and CCTV Survey
 - Replacement of York stone paving slabs and iron posts
 - Suspension of three parking bays on the public highway, outside numbers 11-15 Herndon Road London SW18 2DQ, and four bays outside numbers 10-16 Herndon Road, to allow for mechanical digger and skip.
14. On 16 September 2020, the Respondents were notified of proposed emergency works due to health and safety concerns.
15. All Respondents signed a form to agree with the emergency works and to dispense with any consultation.
16. The Tribunal notes that it was not possible to carry out a consultation exercise with regard to these urgent repairs as the works were immediately started at that time and concluded by 30 September 2020.

The Tribunal's decision

17. The Tribunal, having considered all of the circumstances in this case, has decided that it is reasonable to dispense with the statutory consultation requirements of section 20 of the Act in relation to the urgent sewage and associated works at The Property in September 2020.

Reasons for the decision

18. The Tribunal, in reaching its decision, had to consider whether it was reasonable to grant dispensation. The relevant statutory

provisions are found in subsection 20ZA (1) of the 1985 Act under heading “Consultation Requirements: Supplementary”. That subsection reads as follows: *“Where as 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 it is reasonable to dispense with the requirements”*.

19. The Tribunal find that the Applicant was unable to carry a section 20 consultation exercise due to the urgent nature of the work.
20. Accordingly, the Tribunal is satisfied the consultation procedure ought to be dispensed with. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985 for this work. **Given this, the parties attention is drawn to the fact that the Tribunal have not made a determination on the reasonableness and payability of the service charges under Section 27 A of the 1985 Act for this work.**
21. The Respondents will, of course, enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.

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.

Anthea J Rawlence
Chair

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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) 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.]

1. 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. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.