FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LDC/2020/0171**
HMCTS Code	**:**	**V:CVPREMOTE**
Property	**:**	**Clarendon House, London W2 2NG**
Applicant	**:**	**Church Commissioners for England**
Respondents	**:**	**The leaseholders of the flats within the property**
Type of Application	**:**	**Application under section 20ZA to dispense with consultation requirements for a scheme of Major work**
Tribunal Members	**:**	**Judge Daley** **Trevor Sennett FCIEH**
Date and venue of Determination	**:**	**26 January 2021 heard remotely**
Date of Decision	**:**	**12 February 2021**

DECISION

Covid-19 pandemic: description of hearing:

This has been a remote video hearing on the papers 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 at a remote hearing. The documents I have referred to are within the electronic bundle of X pages, the contents of which have been noted and taken into account by the Tribunal. The order made is set out at the end of the reasoning

Decision of the tribunal

I. **The tribunal grants dispensation in respect of the major works relating to the electrical wiring and gas pipe work at the premises.**

II. **The Tribunal makes no order for the cost occasioned by the making of the application.**

III. **The Tribunal orders that details of the cost together with an estimate of the service charges payable by each leaseholder shall be provided to each leaseholder within 28 days.**

The application

1. The applicant by an application dated 22.12 2020, sought retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

2. The building which is the subject of the application is a converted, period six- storey, residential terraced building comprising basement, ground and four upper floors; the fourth floor is formed by a mansard roof. Located on Strathearn Place London, W2. The premises include a basement, the premises comprise 13 residential units, 10 of which are leased and three of which are retained by the landlord.

The Background

3. Following a survey of the basement of the premises, the Freeholder's surveyors confirmed that there was the need for emergency electrical work at the building. A report from electrical engineers raised concerns about the sub mains for the units in the common parts which were described as exposed and as such had the potential to cause a risk to life, if the area was accessed by unauthorised personnel. The two service heads for the block show signs of prior internal leakage. The

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

Application stated that UKPN had also visited the site and confirmed that they were unable to relocate the service head as the installation was obsolete. The Applicant needs to install a new safe 200A service head and new Ryefield Board.

4. In respect of the Gas supply, two gas leaks were discovered on a redundant leg at the premises and the need for a main communal isolation point at the premises.

5. The scope of the works includes alteration works to the gas pipe and electrical installations and to rectify unsatisfactory arrangements whereby installations were run through the lift shaft.

6. Directions were given in writing on 12 November 2020, for the progress of this case.

7. The Directions stated that -: "…The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does <u>not</u> concern the issue of whether any service charge costs will be reasonable or payable."**

8. The Directions also provided that -: **By 10 December 2020** *Those leaseholders who oppose the application shall complete the attached form and send it to the Tribunal* ***by email*** *to both the applicant/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. They should send with their statement copies of any documents upon which they wish to rely.*

9. The Directions also provided that unless requested by the parties the application could be determined on the basis of written representations during the 7 days commencing 11 January 2021. However, the parties were given the option of making a request for a hearing by 23 December 2020. Seven leaseholders objected to the application, amongst the seven leaseholders, two of the leaseholders requested an oral hearing, and the matter was set down for hearing on 26 January 2021.

10. The hearing, which was held by Video link, was attended by Mr Peter Devere-Catt of managing agent Knight Frank and Mr Ben Francis, property manager. Both attended by Video Link, and Mr Stephen Webster leaseholder of flat 7, and Mrs Jessica Fletcher (who attended on behalf of her husband,) the leaseholder of flat 8.

The Applicant's case

11. Mr Devere-Catt informed the Tribunal that the landlord had been carrying out works to the basement in order to renovate the premises for letting or sale when the condition of the electricals and the gas was found to be in a dangerous condition.

12. He referred us to a letter dated 9 July 2020, from Jones Lang Lasalle (JLL surveyors). In the letter it was noted that the condition of the service head was unsatisfactory, including concerns with earthing, distribution and final circuitry. Both service heads were considered to be showing signs of internal seal leaks, the arrangements with the service head that split the power in two was also considered to be obsolete, and no longer supported by UKPN. We were also told that the supply cables for the leaseholders went through the lift shaft.

13. Mr Devere Catt stated that should it be necessary for UKPN to carry out emergency work, then they had warned that it would have to shut down the supply of electricity to the premises, possibly for a protracted period of time until rectification work had been undertaken.

14. In respect of the gas pipe, there had been two leaks at the property and there was a concern that this was dangerous.

15. Mr Devere Catt stated that these works were outside of the specification of the works, which were being undertaken in the basement. As a result, the landlord arranged for a specification of works to be prepared.

16. We were referred to the Tender report prepared by JLL, dated August 2020. Two contractors had put in tenders and Mr Devere Catt set out how they had undertaken the tendering exercise to ensure that it was fairly carried out and compliant with restrictions imposed by the Coronavirus.

17. Paragraph 7 provided details of two Tenderers Godfrey Martin and Masterfix. Godfrey Martin set out that the work could be undertaken in 5 weeks at a tender sum of £94,591.32. Whereas Masterfix stated that the programme of works would take 6 weeks to complete at a price of £155,237.01, both tenders were exclusive of VAT.

18. In the Recommendation section of the report at point 8.1, it was noted that there were some items of work that Masterfix had made no allowance for, so there was a potential for the cost to increase. JLL set out that they were recommending that the tender be awarded to Godfrey Martin, who had a shorter lead in period to commencing the works and a shorter programme period and had also included more items in their specification and had a lower tender.

19. We were told by Mr Francis that the plan had been for the work to be completed before the winter began, in actuality, the service head had been completed on 13 January. We were told that certificates could be provided to the leaseholders.

20. In respect of the electrical wiring which had gone through the lift shaft, we were told that there was new infrastructure which took the wiring in a riser outside of the lift shaft, however they had not been able to disconnect the wiring that went through the lift shaft as it was up to each leaseholder to connect their demise to the new cabling, and until this occurred the old cabling would have to remain in situ.

21. Mr Catt-Devere told us that in answer to a question that all of the flats had the ability to be connected to the gas installation and that leaseholders had been disconnected from a communal heating and hot water system some years before.

22. In answer to our questions concerning consultation with the leaseholders, Mr Francis stated that the leaseholders were first put-on notice concerning the need for Infrastructure works in 2018, this was a first stage notice concerning the refurbishment of the gas and electric supply. We asked why this work had not been carried out at an earlier stage.

23. Mr Francis stated that the surveyor had advised that the lift would have to be out of commission and it was decided that any work to the electrics should be undertaken at the same time as proposed work to the lift as it would be unreasonable to decommission the lift for a long period of time. It was also felt that the works could wait as they did not appear to be urgent at the time.

24. However, the obsolescence of the electrics meant that if any work was needed UKPN would simply switch off from the mains. However, we noted that there were still flats which were still connected to the old wiring.

25. We heard that the managing agents had sent letters to the leaseholders informing them that the work would proceed on 17.08.2020. Emails had also been sent to leaseholders when the tenders had been returned.

26. Mr Devere-Catt confirmed that no Zoom meetings or additional information had been provided to the leaseholders since 28 August 2020.

The Respondents' case

27. Seven leaseholders had objected to the work and had returned the forms sent with the directions and completed pro forma letters. The text of the letter was as follows-: *" Over the last two years the Landlord has been carrying out substantial development works in Clarendon House, involving the redevelopment of an existing flat and the inclusion of unused communal space to create a second flat. Both these flats are owned by the Landlord.*

The works triggered Landlord concerns about the condition of the infrastructure at Clarendon House and the development and the developer/Landlord commissioned a survey mid 2018 and at the same time they decided that the following infrastructure works should be set in motion:

– Relocation of the gas metres and riser, Replacement of the gas pipework to the communal area of the building

- Re-routing of the existing electrical supply to the communal areas of the building; relocating the distribution board located in the lifts as necessary

Attached is a quote for these works (with VAT to come?) amounting to £95,000. The Landlord is proposing that these costs should be shared by all tenants in line with the standard service charge allocation. It is clear that much of these works would not have been immediately required were it not for the substantial Landlord redevelopment. Of course, as tenants we want our block to be safe and we understand the essential repairs and renewals must be done from time to time but without the redevelopment, any infrastructure costs would have been much lower. Accordingly, we object to this dispensation application and suggest that these costs be paid by the responsible party – developer (the Landlord) However, in recognition of the value to the block the other tenants, through the service charge, make a contribution of say 25%."

28. Two of the leaseholders were present at the hearing, Mr Webster the leaseholder of flat 7, (a Chartered Surveyor) and Mrs Fletcher on behalf of her husband who was the leaseholder of flat 8.

29. Mr Webster stated that he wanted the premises to be safe, given this he was not objecting on the grounds that the work was unnecessary; however there had been a pattern of a lack of communication from the landlord's managing agents. Firstly with the previous managing agents and now the current managing agents. He stated that Knight Frank had refused to deal with the leaseholders individually. He noted that firstly they had gotten rid of the caretaker; the landlord had refused to allow

them to store property and had acted in cavalier fashion in terminating the caretaker's occupancy and developing two new flats. He felt that the two flats rather than the urgency were the catalyst for the work. Mr Webster noted that it had not been considered urgent before, even though there had been a gas leak.

30. Mr Webster stated that the letter from Jones Lang LaSelles Ltd dated 9 July 2020 stated that-: "… UKPN have subsequently visited site in order to relocate the incoming supply cable out of the proposed flat demise and have advised they will not replace the service head of a like for like basis because this type of installation is no longer allowed by UKPN."

31. Mr Devere-Catt stated that the cable which had been referred to be not within the flat it had been moved out of the cupboard next to the lift shaft, given this the urgency was not about the fact that the cabling was within the flat.

32. Mrs Fletcher agreed with Mr Webster that the managing agents had acted in a cavalier fashion she stated that there was a lack of detail in what works had been undertaken. She stated that the managing agents had sent a letter asking the leaseholders for access to the flats for gas works.

33. Mr Devere-Catt did not accepting that the managing agents/landlord had acted in a cavalier fashion, however, he accepted that communicate could have been better. He agreed that the leaseholders could inspect the work and see where the cabling was situated. He acknowledged that the redevelopment of the building would mean that the service charge apportionment and the proportions to be contributed by the leaseholders would change because of the new flats. He stated that he could draw up sample bills which would provide the leaseholders with an indication of the costs. The apportionment would be based on square footage at the premises.

34. Both leaseholders acknowledged that they wanted the premises to be safe and the concern had been that the works were only occasioned by the development of the flat and they had been unsure whether they were contributing to the basement works. Although they acknowledged that work to the gas and electricity installations had been needed.

35. In respect of the costs of the application, Mr Devere- Catt stated that the cost of the managing agents' time was to be paid by the landlord and for this reason he was not looking for the costs of preparing for this hearing to be paid for from the service charges. However, he asked for the application fees and the hearing fee to be paid by the leaseholders.

36. Both Mr Webster and Mrs Fletcher objected to this, as they considered that the Applicant had failed to adequately consult with the leaseholders and that this had led to their mistrust of the landlord developing as the landlord had not kept them informed about the scope of the works to the flats that were being developed, and the urgency for the electrical works had appeared to have arisen in the context of the landlord's works.

The tribunal's decision

1. 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 1985 Act, in relation to the work to the installation and infrastructure work for the gas and the electricity at the premises.

2. Further the Applicant **shall within 28 days** provide the Respondents with information of the full scope of the work, which may include assess to digital photographs/videos.

3. The Respondent shall provide sample bills, and details if known of how the likely percentage of the cost payable by the landlord and that payable by the leaseholders.

Reasons for the decision

4. 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".*

5. The Tribunal find that the Applicant was unable to consult fully under section 20; due to the urgent nature of the work and the health and safety risk and potential inconvenience of having the supply disconnected should electrical works be needed by UKPN.

6. However we consider that the landlord could have recognised the need to consult at an earlier stage which would have enabled a full consultation to take place. But, we are mindful that the leaseholders acknowledge the need for the work, and we noted that the landlord followed the proper tendering process and accepted the lower tender, as such there was no prejudice to the leaseholders.

7. We noted that the landlord had been aware of the need for some work to be undertaken to the electric and gas supply since 2018, albeit that the works became more urgent once the inspection was carried out. We noted that there was a risk to the health and safety of the leaseholders had the repairs not been undertaken.

8. We found that although the leaseholders had been informed about the application none of the leaseholders had provided details of alternative contractors or suggested that they would have been able to source the work at a lower price than the tender. There was no evidence that they had suffered any prejudice that is that consulting would have changed the nature, scope or costs of the work, even though the landlord had not consulted on the works.

9. Accordingly, the Tribunal is satisfied that the works undertaken were urgent and that in these circumstances the consultation procedure ought to be dispensed with.

10. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985 for this very limited aspect of the 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.**

11. The leaseholders 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.

12. In respect of the application for costs before the tribunal. We noted that the cost of the application fee was occasioned as a result of the need for this application which could have been anticipated given the identification of the need for works in 2018. We accepted on the evidence of Mr Webster and Mrs Fletcher that consultation on the development of premises could have been better and that had the landlord provided better information to the leaseholders the

leaseholders may not have objected to the work. Accordingly, we have decided not to grant the Applicant's application for reimbursement of the application and hearing fees.

Judge Daley **Date12/02/21**

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.

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).