

10405



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

Case Reference : **LON/00BE/LDC/2014/0138**

Property : **Tea Trade Wharf, 26 Shad Thames,
London SE1 2AS**

Applicant : **Building 15 Management Company
Limited**

Representative : **Ashby Surveyors**

Respondent : **Various Leaseholders**

Representative : **Unrepresented**

Type of Application : **To dispense with the requirement
to consult lessees about major
works**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Philip Tobin FRICS (Valuation
Member)**

**Date and venue of
Determination** : **19 November 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **19 November 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the following works to the roofing membrane to the 6th floor balconies (“the Qualifying Works”) at Tea trade Wharf, 26 Shad Thames, London SE1 2AS (“the Building”). Further details of the Qualifying Works are to be found in an estimate from Marleybone Interiors London Limited (“MILL”), dated 07 November 2014.
- (2) No terms are imposed on the grant of dispensation, other than those set out at paragraphs 16 and 17 below.

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 16 October 2014
2. Directions were issued on 17 October 2014. These provided that the case be allocated to the fast track with a short hearing. The application was originally due to be heard on 12 November 2014. The Applicant’s surveyor, Mr Colin Chapman of Ashby Building Surveyors Limited (“ABSL”), was unable to attend the hearing due to travel difficulties. The hearing was therefore adjourned and the restored hearing took place on 19 November 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Building is a converted dockside warehouse, comprising of 75 flats. The Applicant is the freeholder of the Building and the Respondents are the leaseholders of the flats. The members of the Applicant Company are some, if not all, of the leaseholders.
5. The Applicant seeks prospective dispensation in relation to the Qualifying Works, which are said to be urgent.
6. The grounds of the application were set out in the original application form and in the Applicant’s statement of case.
7. On 12 November 2014, the tribunal wrote to Mr Ashby, raising certain queries regarding the Qualifying Works that were to be addressed at the hearing.

The hearing

8. The Applicant supplied the tribunal with a bundle of relevant documents in accordance with paragraph 8 of the directions. This included copies of the original application, the directions, the Applicant's statement of case, notices of intention and correspondence with the leaseholders.
9. Mr Chapman attended the hearing on 19 November 2014 and provided further details of the Qualifying Works and answered the tribunal's queries.
10. The Applicant's case can be summarised as follows:
 - (a) The Building was converted into Flats in the 1990s. Originally the Building was 5-storeys high. During the conversion works an additional floor was constructed on roof. This was set back from the rest of the building, creating balconies on the sixth floor. The balconies act as roofs to the flats below. There is timber decking on the balconies. The roofs are covered with single ply roofing membrane, which appears to have been punctured and split on a regular basis due to traffic on the balconies.
 - (b) There are 13 maisonettes spanning the fifth and sixth floors of the Building. There has been a history of leaks from the balconies, which have been dealt with by way of patch repairs.
 - (c) Towards the end of August 2014 repair works were completed to Flats 703, 705 and 706. The single ply membrane was lifted, as well as the insulation and decking to see the make up and construction of the Building. Having sought professional advice, the Applicant arranged for the membrane to be overcoated with a rubberised liquid applied system, which would allow for a degree of movement and puncture resistance. These works have been completed and have proved to be successful.
 - (d) There are currently three further leaks to Flats 502, 503 and 601, which have also been attributed to balcony defects and which require remedial work. The leaks into Flat 503 are particularly severe and may be attributable to a hole in the concrete slab.
 - (e) The Applicant wishes to overcoat the remaining 10 balconies on the sixth floor, with the rubberised liquid applied system. This should prevent further leaks and provide a long term solution.
 - (f) Mr Ashby has obtained two tenders for the works and is awaiting a third. The Applicant wishes to undertake the works to the

balconies in December 2014 rather than embark upon a full consultation exercise. It considers that the works are urgent, given the time of year and the leaks to Flats 502, 503 and 601. If the Applicant is required to fully consult with the leaseholders then this will substantially delay the Qualifying Works.

- (g) ABSL served notices of intention on the Respondents on 14 October 2014, giving them 10 days (rather than the prescribed 30 days) in which to respond. There have been no objections to the scope of the works. Some of the Respondents nominated MILL to provide a tender for the Qualifying Works, as this company undertook the balcony repairs in August 2014 and have undertaken other works at the Building. MILL produced a tender on 07 November 2014, in the sum of £99,173.48 plus VAT. A decision on the appointment of the contractor will be made once the third tender is received.
 - (h) Some of the Respondents have replaced the timber decking on their sixth floor balconies and have raised queries regarding the lifting and refitting of the decking. Some of the Respondents on the lower floors have suggested that they are not liable to contribute to the balcony repairs. However none have objected to the scope of the works.
 - (i) Mr Ashby informed the tribunal that repairs could be limited to the balconies above the three affected flats. However this would involve the erection of a substantial scaffold and removal of some of the decking, which would then need to be stored off site. The costs involved would be substantial and it would be more cost effective to undertake all of the Qualifying Works at the same time.
11. Paragraph 7 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they supported the application. The tribunal has only received response forms from 8 flats, of which 7 supported the application. The remaining form had not been completed. None of the Respondents has opposed the application, identified any prejudice or proposed any terms as a condition of granting dispensation.

The tribunal's decision

12. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act, in respect of the Qualifying Works. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

13. The Qualifying Works are urgent, given the ongoing water leaks into three flats and the recent wet weather. Embarking upon a full consultation exercise would take at least 3 months, if not longer. The works cannot wait that long. Given the need for a substantial scaffold and the removal and storage of the timber decking it is appropriate for all of the Qualifying Works to be undertaken at the same time, rather than limiting the work to the balconies above the affected flats.
14. The only leaseholders that have responded to the application have all given their support. There have been no objections and none of the Respondents has suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the Respondents has suggested that any terms should apply to the grant of dispensation.
15. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the Respondents from seeking a determination of their liability to contribute to the cost of the Qualifying Works, pursuant to section 27A of the 1985 Act, should they wish to do so. Further the tribunal makes no decision on the Respondents' liability to contribute to the cost of the Qualifying Works under the terms of their leases.
16. Where leaseholders have already renewed their decking, it is to be carefully lifted and replaced as part of the Qualifying Works.
17. Where existing decking still has an, albeit limited, life expectancy the Applicant shall consult with the relevant leaseholders, as to whether they prefer the existing decking to be reinstated or replaced with new. Where the decking is replaced then the cost of this work is to borne in accordance with the terms of the leases.

Name: Tribunal Judge Donegan **Date:** 19 November 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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) the appropriate 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.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.