



12029

**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : CAM/11UC/LDC/2016/0023

**Properties** : Shardeloes,  
Amersham,  
Bucks. HP7 0RL

**Applicant** : Shardeloes House Ltd.

**Respondents** : the tenants of the 24 flats named in  
the application

**Date of Application** : 15<sup>th</sup> December 2016

**Type of Application** : for permission to dispense with  
consultation requirements in respect  
of qualifying works and a long term  
qualifying agreement (Section 20ZA  
Landlord and Tenant Act 1985 (“the  
1985 Act”))

**Tribunal** : Bruce Edgington (lawyer chair)  
David Brown FRICS

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## **DECISION**

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1. The application for dispensation from the consultation requirements in respect of the appointment of a surveyor and roofing works to the property as described in the application is dismissed.
2. An order is made pursuant to section 20C of the 1985 Act preventing the Applicant from recovering its costs of representation within these proceedings as part of any future service charge demand from Edward Copisarow from Flat 1.

### **Reasons**

#### **Introduction**

3. The Applicant appears to be the landlord of the property which consists of a mansion house containing 10 flats and porter's flat plus a west wing containing 14 flats and maisonettes. It is said to be a Grade II listed building. The application refers to planning refurbishment roofing works to the property and dispensation is requested from the consultation requirements in section 20 of the 1985 Act for both the

works themselves and the appointment of a surveyor under a long term agreement. The application states that the works have commenced.

4. The application refers to a first consultation letter dated 4<sup>th</sup> February 2015. A sample is in the bundle which just refers to the appointment of the surveyor. A letter was written on 25<sup>th</sup> March 2015 giving a list of surveyors from whom tenders would be invited.
5. A sample letter dated 25<sup>th</sup> November 2015 is in the bundle which appears to be the first consultation letter for the roof works and records that a specification is being prepared by the appointed surveyor. There is then a sample letter dated 24<sup>th</sup> March 2016 giving a summary of the estimates and a list of anticipated ancillary charges. It appears from a letter written to Edward Copisarow dated 25<sup>th</sup> May 2016 that the appointed contractor was E J Roberts Roofing Ltd, the cheapest of the contractors who tendered.
6. This application was dated the 15<sup>th</sup> December 2016 and on the 20<sup>th</sup> December a Directions Order was made requiring the Applicant to file and serve a statement explaining whether the consultation was in accordance with the regulations and/or its reasons for seeking dispensation. Respondents were also directed to file and serve any responses to the application.
7. The order said that the Tribunal would be content, as suggested by the Applicant, for the matter to be determined on a consideration of the papers and any written representations filed, and would do so on or after 24<sup>th</sup> February 2017. It also said that if any party wanted an oral hearing, one would be arranged. No request for an oral hearing has been received.
8. A bundle of documents has been received from the Applicant for the purpose of this determination. The order required such bundle to include the application and documents filed and served. In fact it did not. With the application were a number of contributions from various leaseholders which are not in the bundle. The reason why a full bundle is needed is that the Tribunal has an office in Cambridge and the Tribunal members are all over the east of England. They only receive the bundle (not the office file) which must be complete. It was pure coincidence that the Tribunal chair also made the directions order and had seen the correspondence.

### **The Law**

9. Section 20 of the 1985 Act limits the amount which lessees under residential long leases can be charged for major works to £250 per flat unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, an invitation to lessees to nominate potential contractors, facility for inspection of documents, a duty to have regard

to tenants' observations, followed by a detailed preparation of the landlord's proposals. There then has to be a tender process with estimates being obtained including at least one from a contractor unconnected with the landlord. These requirements last well over 2 months.

10. There are similar provisions for long term agreements where the limit is £100 per flat without proper consultation or dispensation.
11. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with some or all of the consultation requirements if it is satisfied that it is reasonable to do so.

### **Discussion**

12. The statement from the Applicant's solicitors says that the consultation regulations have been followed. It then says "*further and in the alternative, the Applicant requests dispensation should the Tribunal decide that the procedure (used) is not in accordance with the regulations*".
13. The comments from leaseholders filed with the application do not object to the works but are about detail. Since the application has been made, Mr. Copisarow's solicitors have written to say that he "*does not oppose the application*".
14. These are adversarial proceedings and the Tribunal is here to resolve disputes. The Applicant's solicitors undertook the consultation process. With the greatest respect to them, the Tribunal is not here to advise solicitors whether they have complied with the law. Consultations have been undertaken and no leaseholder has suggested that they are not in accordance with the regulations.

### **Conclusions**

15. Assuming that the consultations have been carried out properly, an application for dispensation is *otiose* and is therefore dismissed. Mr. Copisarow's solicitors have asked for a section 20C order to be made. Such an order can only be made on application and is therefore made in respect of him. If all the other leaseholders had asked for such an order, it would have been made. The Tribunal has not considered the lease to see whether such monies could be demanded. It makes the order as it has been asked to do so and it considered it just and equitable that a precautionary order is made.
16. It is also worth observing, as have Mr. Copisarow's solicitors, that this is not an application under section 27A of the 1985 Act for a determination of the reasonableness and/or payability of the service charges which will arise following the completion of the relevant work. The decision is therefore not to be taken as an endorsement about the price of the works.
17. However, any leaseholder wanting to challenge the cost will need to produce clear evidence of unreasonableness bearing in mind that there

has been professional input and a tender process.

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**Bruce Edgington**  
**Regional Judge**  
**24<sup>th</sup> February 2017**

**ANNEX - RIGHTS OF APPEAL**

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.