



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

Case Reference : CHI/00ML/LDC/2017/0058

Property : Chartwell Court, Churchill Square, Brighton,
BN1 2TE

Applicant : Chartwell Court Residents Limited

Representative : Dean Wilson LLP

Respondents : The Lessees

Representative :

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

Tribunal Members : Judge N P Jutton

Date of Decision : 30 January 2018

DECISION

1 **Introduction**

2 Chartwell Court is a purpose-built multi-storey block of residential flats containing
some 69 flats.

3 The Applicant holds the property under the terms of a head lease. Each flat at the
property is then held under the terms of an under-lease. There is with the papers
before the Tribunal an example of such an under-lease being the under-lease for Flat
59 (pages 145-177 in the bundle).

4 The Applicant applies to the Tribunal pursuant to section 20ZA of the Landlord &
Tenant Act 1985 for dispensation from the consultation requirements imposed on it
by section 20 of that Act in respect of certain proposed works at the property, namely
the installation of a 'leak safe' system to identify water leaks in flats at the property.

5 Directions were made by the Tribunal on 30 August 2017. Those Directions provided
that the application be determined without a hearing on paper in accordance with
rule 31 of the Tribunal Procedure Rules 2013, unless a party objected in writing to
the Tribunal within 28 days of receipt of those Directions.

6 There is before the Tribunal a bundle of response forms received by the Tribunal
from Lessees at the property. There are response forms from the Lessees of Flats 5,
10, 18, 19, 22, 31, 39, 40, 42, 44, 50 and 51. All of those response forms, save for
one, provide that the Lessee supports the Applicant's application for dispensation
and is content for the application to be decided on the basis of written
representations only. The exception is the Lessee of Flat 42, Mr Reyadh Al-Jawahiri.
Mr Al-Jawahiri states on his response form dated 17 September 2017 that he does
not support the Applicant's application for dispensation, nor does he agree that the
matter be dealt with on the basis of written representations only.

7 However, Mr Al-Jawahiri subsequently spoke to the Tribunal Office by telephone
and said that he consented to the application to be dealt with on the basis of written
representations without a hearing. Accordingly, the Tribunal has proceeded to make
its determination on the basis of the papers before it without a hearing.

8 **Documents**

9 The documents before the Tribunal are a bundle of documents of 226 pages which
include the Applicant's Statement of Case, response forms received from Lessees,
Directions made by the Tribunal, Witness Statements of Christopher Williams and
Nicholas Mills on behalf of the Applicant, copy HM Land Registry Official Copy
Entries of the freehold title and the Applicant's title, a copy of the head lease and a
copy of the under-lease of Flat 59 (the Lease), a survey report from Leak Safe
Solutions Limited dated 17 May 2017, the buildings insurance policy for the property
for the period 24 June 2017 to 23 June 2018, correspondence received from various
lessees and letters of objection from Mr Al-Jawahiri, together with other documents.
References in this Decision to page numbers are to page numbers in that bundle.

10 **The Law**

11 Section 18 of the Landlord & Tenant Act 1985 (the 1985 Act) defines 'service charge'
as being "*an amount payable by a tenant of a dwelling ... for repairs, maintenance*

... the whole or part of which varies ... according to the relevant costs". Section 18(2) defines 'relevant costs' as "the costs ... incurred ... in connection with the matters for which the service charge is payable".

12 Section 20 of the 1985 Act provides however for the Lessor to undertake certain consultation requirements with the Lessees in the event that the service charge contribution to be made by any Lessee for the cost of relevant works exceed "an appropriate amount set by regulations". Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 currently sets that amount at £250.

13 Section 20 states that:

"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 either sub-section (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*
- (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 sub-section (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 sub-section, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contributions would otherwise exceed the amount prescribed by, or determined in accordance with the regulations, is limited to the amount so prescribed or determined.*

14 Section 20ZA of the 1985 Act however provides that an application may be made to this Tribunal to dispense with such consultation requirements. It provides as follows:

- (1) *Where an application is made to the appropriate 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”.

15 **The Lease**

- 16 Clause 3(ii) of the Lease provides that the Lessor *“will insure and keep insured against loss or damage by fire and such other risks as the Lessor in its absolute discretion shall deem necessary each and every part of the Building together with all Lessor’s fixtures and fittings therein and the said roadways forecourt pavement steps and planted areas (if any) in an insurance office or with Underwriters of repute in the full amount of the cost for the time being of rebuilding or reinstating the same and will apply all monies received in respect of such insurance or insurances in rebuilding and otherwise reinstating the same”.*
- 17 By clause 4(J) of the Lease, the Management Company (defined in the Lease as the ‘Management Trustee’ and which at the date of the Lease was a company called Chartwell Court Management Company Limited), covenants *“to pay all premiums and other costs and expenses (if any) of insurances pursuant to the Lessor’s covenant contained in clause 3(ii) hereof”.*
- 18 By clause 4(M) the Management Company covenants *“to provide and undertake such of the services and matters referred to in the Second Schedule hereto as it may from time to time consider necessary”.*
- 19 Further, clause 4(N) of the Lease provides amongst other things that the Management Company will defray the costs of the head Lessor in complying with the covenants contained in the head lease. The head lease in turn contains a provision for the Applicant (understood to be the successor in title to the original head Lessor and Management Company) to keep the property insured.
- 20 Clause 4(A) of the Lease contains certain repairing covenants on the part of the Management Company, in particular to:
- “at all times during the said term to maintain in good and substantial repair and condition:-*
- (i) *the external walls foundations structures concrete floor slabs and all other roofing materials of the Building (except in so far as the same may be the liability of any of the tenants of the flats comprised therein respectively);*
 - (ii) *the staircases passages landings and entrances of the Building used and enjoyed in common by the Lessees tenants and occupiers for the time being thereof respectively;*
 - (iii) *the gutters sewers drains systems pipes cables conduits ducts and other conducting media and tanks the mechanical air extractor plant in under and upon the Building or any part thereof and used in common as aforesaid; and*
 - (iv) *all such parts of the Building as are not the liability of any lessee tenant or occupier for the time being of any of the flats comprised therein”.*

21 Clause 5 of the Second Schedule refers to:

“All charges assessments and other outgoings (if any) payable by the Lessor or the Management Trustee in respect of any part or parts of the Building or the said roadways forecourt pavements steps and planted areas (if any) and the cost of the provision and supply of such other services for the benefit of the tenant and the other tenants of flats in the Building and of executing such other repairs and such improvements works and additions and to defray such other cost (including the modernisation or replacement of plant and machinery) as the Lessor of the Management Trustee shall consider necessary to maintain the Building as a first class residential property or otherwise desirable in the general interests of the tenants of the Building”.

22 The Third Schedule of the Lease defines the service charge payable by the Lessee as *“... a contribution towards the annual costs incurred by the Management Trustee for the provision of the matters referred to in clause 4 hereof and the Second Schedule”.*

23 By clause 12 of the Lease, the Lessee covenants with the Management Company and the Lessor to pay the service charge. There is a requirement to pay that in advance, and there is provision in Schedule 3 for that to be adjusted at the end of the financial year on the production of service charge accounts as a debt from the Management Company to the Lessee in the event that the estimated service charge exceeds the actual service charge or conversely, a further payment from the Lessee to the Management Company in the event that the actual service charge exceeds the estimated.

24 **The Applicant’s Case**

25 The property has suffered from a history of water leaks. There have been a number of insurance claims over the last 5 years, brief details of which are attached to the Statement of Christopher Williams, the Applicant’s Insurance Broker. Mr Williams is an independent Insurance Broker who has acted for the Managing Agents of the property in respect of the placing of insurance since 2013. He says that he is not tied to any particular insurance company. Mr Williams says that when he sought to arrange the insurance for the year commencing June 2016, because of the history of leaks, he ran into problems. He approached a number of insurance companies who were not prepared to grant cover. Mr Williams understands that out of the 69 flats at the property, only around 20 are regularly occupied throughout the year. The majority of flats are owned by overseas based Lessees who occupy only during the summer months. The water leaks constitute a grave source of damage to the property particularly if they go undetected for many months. That Chartwell Court with its relatively low occupancy levels, is particularly at risk. That in all the circumstances, it is not possible to place insurance for the escape of water at the property without the installation of a risk management programme.

26 The property is currently insured with Aviva but that policy excludes the escape of water in the absence of some form of risk management programme. One such programme is known as the ‘Leak Safe system’. Mr Williams says that having made what would appear to be fairly extensive enquiries, that the only solution that he can offer to ensure that the property has cover for the escape of water is a policy with Aviva with the benefit of the ‘Leak Safe system’ in place.

Benson (2013) UKSC 14. The general purpose of the consultation requirements is to ensure that Lessees are protected from paying for inappropriate works or paying more than would be appropriate. The question for the Tribunal is the extent to which, if any, the Lessees would be prejudiced by the failure to consult. If notwithstanding the failure to consult the Lessees find themselves in the same position that they would have been had the consultation process been properly completed, then there would be no prejudice suffered by them and in that event dispensation should be granted.

- 41 Daejan made it clear, notwithstanding the burden that this may place upon lessees, that the factual burden of identifying some relevant prejudice rests with the lessees. No evidence has been put forward by Mr Al-Jawahiri (the only lessee that has objected to this application) of relevant prejudice that would be suffered by the Lessees if dispensation is granted and there is no consultation process. The factual burden of identifying relevant prejudice rests with Mr Al-Jawahiri and he has failed in the view of the Tribunal to satisfy that burden.
- 42 Mr Al-Jawahiri expresses concern that if dispensation is granted so that there is no consultation process, that that will set a precedent. He should not have that concern. Dispensation to consult in respect of the particular works proposed by the Applicant does not form some form of precedent. The Applicants will remain bound by their statutory duty to consult with the Lessees in respect of any future proposed works at the property where the service charge contribution in respect of such works by each lessee exceeds the amounts set out from time to time in the Service Charges Consultation Regulations referred to above. Any application in the future for dispensation from such consultation requirements will be addressed by the Tribunal on its own merits and without any reference to previous Decisions in respect of the property.
- 43 In the circumstances, for the reasons stated, the Tribunal grants the application for dispensation.

Dated this 30th day of January 2018

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an

extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.