



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

Case reference : **LON/00AG/LDC/2021/0246**

Applicant : **LAB HOLBORN LONDON ESTATES LIMITED**

Respondents : **THE LEASEHOLDERS OF 21 BARTER STREET**

Property : **21 Barter Street, London, WC1A, 2AH**

Tribunal : **Judge M Mullin**

Date of Decision : **1 March 2022**

**DECISION ON AN APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985**

IMPORTANT – COVID 19 ARRANGEMENTS

This has been a remote video hearing which has been not objected to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Background to the application

- (1) This is an application for dispensation from the consultation requirements in s.20 of the Landlord and Tenant Act 1985.
- (2) The Applicant is the freehold owner of the building known as 21 Barter Street, London, WC1A, 2AH.
- (3) The Respondents are the long leaseholders of the Building, there are 14 flats within the building (one of which is held by the Applicant). Only Phillip Wylie (Flat 2, jointly with Kirti Wylie) and Paul Bello (Flat 8) are participating in this application.
- (4) On or about 14 February 2021 masonry corbels fell from the Building onto the public footpath, the Claimant erected scaffolding to make the Building safe and commissioned an inspection of the Building by PAYE Stonework and Restoration Ltd, which took place on 1 April 2021. That

report identified certain works that required immediate attention and certain works that would require attention within 1- 5 years.

- (5) It was hoped the cost of works would be met by insurance – in the event the insurer declined to pay and the Applicant commissioned Hollis Global Limited to produce specification and tender documents. Hollis and PAYE recommended to the Applicant that it undertake other works at the same time – essentially addressing maintenance works that may have required attention for some time as well as redecorating following works, these works formed part of the tender.
- (6) Ultimately four companies tendered and the Applicant elected the cheapest – that of Bell Decorating Group, with whom it had a pre-existing relationship.
- (7) The Applicant decided not to carry out a s.20 consultation as it wished to move as quickly as possible as it (and ultimately the leaseholders) were incurring the cost and inconvenience of scaffolding that remained in place around the Building.
- (8) The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**
- (9) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 give guidance on how the application will be dealt with.

Decision

1. The Tribunal grants dispensation in relation to the works described in schedule contained at pages 107 – 121 of the bundle conditional upon the payment of £950 to Mr.Bello and £950 to Mr. Wyle, being their costs of this dispensation application.

Reasons

2. The tribunal is grateful to the parties for the way they conducted themselves during the course of the hearing. The Tribunal has come to the conclusion that dispensation should be granted, essentially for the reasons put forward by the Applicant through counsel.
3. On these sorts of applications, the tribunal should focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the consultation requirements.
4. While the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the tenants: once they have shown a credible case for prejudice, the tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case.

5. The tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application.
6. Two leaseholders have opposed the application. They are Mr. Bello and Mr. Wylie. Their reasons for opposing the application are set out in their statements which are contained in the hearing bundle at pages 57 -68.
7. There reasons for opposing the application include a healthy dose of scepticism regarding the Applicant's professed desire to complete the works urgently and that being the reason for not following the consultation process. The tribunal shares that scepticism. It has taken a period of time to get these works commissioned which is quite incompatible with the assertion it was being done as a matter of real urgency. The Tribunal is also sceptical regarding the suggestion that this situation that was ever likely to result in the insurance company covering the costs of the works and that should have been obvious from the beginning.
8. However, as Mr. Granby (counsel for the Applicant) submitted, the question of why consultation requirements were not followed is of limited relevance. We are where we are. He is correct in the tribunals view to point out that Mr. Bello and Mr. Wylie have not clearly directed their statements to the issue of prejudice to the leaseholders. None of their objections, as well-founded as they maybe in other respects, touch meaningfully on the matters the tribunal has to decide.
9. It is important to note that whilst the consultation requirements were not followed the applicant did test the market, they received four tenders and selected the cheapest one. The Respondents have not identified a step they would have taken had the requirements been complied with such as instructing an expert or suggesting a particular contractor.
10. In those circumstances it seems to the tribunal that dispensation should be granted, the tribunal being unable to identify any relevant prejudice which would justify not doing so or doing so on more onerous conditions.
11. The tribunal takes the view though that the dispensation should be conditional upon the payment of Mr. Wylie and Mr. Bello's costs of responding to the application. When asked at the hearing how long they had spent on the matter they said approximately 50 hours each. At the litigant in person rate of £19 per hour in the civil procedure rule that amounts to £950 each.
12. In seeking dispensation, the Applicant was asking for an indulgence. As noted above, it seems likely to the tribunal that had it decided to follow

the consultation requirements, the Applicant could have done so in a very similar time frame. It was entirely understandable that the Respondents want to make that point in opposition to the application. In all the circumstances it seems to the tribunal that Mr. Bello and Mr. Wylie should not be out of pocket for responding to the application.

13. *This decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.*

Tribunal Judge Mullin

1st March 2022

Appendix of relevant legislation
Section 20 of the Act

(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.

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).