

9113



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

**Case Reference** : **LON/OOBD/LSC/2013/0225**

**Property** : **1-45 Lime Court, Gypsy Lane,  
London SW15 5RJ**

**Applicant** : **Gypsy Lane Estate (2012) Ltd**

**Representatives** : **Mr J Mortimer MinstD MIRPM  
Assoc RICS, Managing Director,  
John Mortimer Property  
Management Ltd**

**Respondent** : **Lessees of flats 1-45 Lime Court,  
Gypsy Lane, London SW15 5RJ**

**Representative** : **No attendance**

**Type of Application** : **Application for the dispensation of  
all or any of the consultation  
requirements provided for by  
section 20 of the Landlord and  
Tenant Act 1985**

**Tribunal Members** : **Miss A Seifert FCI Arb  
Mr S Mason FRICS FCI Arb  
Mrs J Dalal**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23<sup>rd</sup> July 2013**

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**DECISION**

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## **Decision of the tribunal**

- (1) The tribunal makes an order for dispensation as set out under the various headings in this decision.

## **The application**

1. The property which is the subject of this application is a 1-45 Lime Court, Gypsy Lane, London SW15 5RJ, ("Lime Court").
2. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for dispensation of all or any of the consultation requirements provided for by section 20 of the Act.
3. At the hearing the applicant withdrew its application under section 27A (and 19) of the Act, for a determination of liability to pay and reasonableness of service charges.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

5. The applicant was represented by Mr John Mortimer MinstD, MIRPM, Assoc RICS, Managing Director of John Mortimer Property Management Ltd, the managing agents. The respondents did not appear and were not represented.
6. The following persons also attended the hearing: Mr Alan Colinson, Building Surveyor; his assistant Ms Penny Davidson; Mr Andrew Dunmall of the managing agents; Mr Martin Conway, Director of GLF; Mr Steve Buckley, Director of the applicant.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. A bundle of documents was provided by the applicant. Additional documents were provided by the applicant at the hearing including the Minutes of the first annual AGM of Gypsy Lane Estate (2012) Ltd held on 29<sup>th</sup> November 2012, documents containing information relating to the works provided to the lessees, and copy emails.
9. The tribunal has also seen a copy of a previous determination in respect of various blocks of flats at Gypsy lane Estate, dated 24<sup>th</sup> July 2012 (Case Reference: LON/00BD/LSC/2012/0351)

10. As previously stated, in the course of the hearing the applicant orally withdrew its application under section 27A of the Act, and was asked to confirm the same in writing to the tribunal.

### **The issues**

11. The relevant issue for determination was whether or not to grant an order dispensing with the consultation requirements in respect of the works carried out at Lime Court identified in the application.

### **The background, evidence and submissions**

12. The property which is the subject of this application is Lime Court, which is a 9 storey block of flats forming part of the Gypsy Lane Estate. In total the Gypsy Lane Estate comprises 6 blocks of flats including the subject block.
13. The landlord's interest under the various leases of the flats in Lime Court ("the leases") was at all material times and is vested in Gypsy Lane Freehold (GLF). A copy of a sample lease was provided.
14. The leases included obligations for payment of service charges. The fifth schedules to the leases listed the purposes for which the maintenance fund be applied. This included obligations to keep Lime Court in good repair and condition.
15. There has been an on-going water ingress problem at flat 42, Lime Court.
16. It was not in dispute that the Maintenance Company was and is under an obligation to carry out the works of repair which are the subject of this application.
17. In proceedings in the Central London County Court in Claim Number 8H102372. On 19<sup>th</sup> March 2012 a consent order ("the consent order") was entered into in a claim between Gypsy Lane Estate Ltd, the Maintenance Company at that time, as claimant, and Nasrin Mostoufi, lessee of flat 42, Lime Court, as defendant. This included provisions for works to be carried out by Gypsy Lane Estate Ltd. The consent order also included provisions for payment of sums Gypsy Lane Estate Ltd to Ms Mostoufi, and costs. A copy of the consent order was provided.
18. At the time of the above proceedings, Gypsy Lane Estate Ltd was the Maintenance Company. The Maintenance Company was defined in the leases as the maintenance trustee for the time being of the Maintenance Fund.

19. The tribunal were informed that following the consent order neither the sums payable by Gypsy Lane Estate Ltd, nor the costs payable by Gypsy Lane Estate Ltd, were paid.
20. A winding up application was served on Gypsy Lane Estate Ltd by solicitors on behalf of Ms Mostoufi. The order took effect and Gypsy Lane Estate Ltd is in the process being wound up by the Official Receiver.
21. Gypsy Lane Estate Ltd was replaced by Gypsy Lane (2012) Ltd, the applicant in this application, as Maintenance Company under the leases.
22. At all material times John Mortimer Property Management Ltd was the managing agent.
23. The background to the problems at Lime Court, were set out in a letter from John Mortimer to the tribunal dated 22<sup>nd</sup> March 2013. The tribunal were informed that following the consent order works in the sum of £40,295.94 were carried out at Lime Court. Following the section 20 consultation and commencement of the works, further problems were discovered. The applicant did not carry out a further section 20 consultation process.
24. The reasons given in Mr Mortimer's letter included that the works were very urgent; there was no time to carry further section 20 consultation; the scaffolding was already in place; additional rental charges for scaffolding would have been incurred; and the repair crew would have been assigned to other work.
25. Mr Mortimer submitted that it was proportionate for the landlords to carry out the additional works without recourse to a fresh section 20 consultation process. Having sought advice at the time of the decision to proceed, the landlord sought dispensation from the consultation provisions under section 20ZA of the Act, in respect of the additional works.
26. In his letter Mr Mortimer stated that following the above consent order, section 20 consultation notices were issued for the installation of a cavity wall damp proof course tray to the parapet wall and new roof covering to the roof terrace. Works commenced in late August 2012 with the erection of the scaffolding to this 9 storey block.
27. During the demolition of the external brickwork to the parapet wall it was found that the cavity was bridged with a mixture of concrete, concrete debris or cast concrete at floor slab level. An additional scaffold lift was erected under the working platform and exploratory holes undertaken along the elevation of flat 42.

28. The investigation ascertained that the concrete floor slab had been cast in situ with a down stand kicker extending to the external wall with a cast in situ concrete inner leaf to the parapet wall and a brick outer leaf. This had in effect bridged the cavity wall along with the debris in the cavity, therefore allowing water to travel to the inside of the cavity wall, causing the leak within the property. Mr Mortimer added that to the front of the concrete kicker there were two courses of slip bricks stuck to the outer face of the concrete. These slip bricks were approximately 25mm thick. Above the kicker were several courses of brickwork and within this area the cavity was partly filled with concrete, concrete debris or cast concrete.
29. Mr Mortimer explained that the original intention was to strengthen and damp proof the cavity around the perimeter of the building. However when the concrete kicker was identified, an alternative solution was required. A structural engineer was appointed to assist the building surveyor to prepare a solution to the problem.
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31. The documents submitted in support of the application included:
- Surveyors report
  - Tender specification
  - Quotations for remedial work
  - Section 20 notice, part 1
  - Section 20 notice, part 2
  - Section 20 notice, part 2 (revised)
  - Surveyors report for additional works
  - Tender quotation of additional works
  - Total project cost
  - Summary of costs to be recovered
  - Invoices for the total project
  - Sample lease
  - List of lessees at Lime Court
  - Photographic evidence of the works
32. The section 20 notices were served on each of the lessees by post and email.

33. The section 20, part 2 notice was revised because after the presentation of the section 20, part 2 notice, one of the Directors at the time requested that another contractor be included in the tender process.
34. Mr Colinson said at the hearing that he had a meeting with the contractors on site, so that they were fully aware of the scope of the works to be tendered for. At the time the additional tender was obtained that other contractors were given the chance to reconsider their tenders. The tender by CJ Swainland Building Services Ltd, the lowest tender, was accepted.
35. The lessee in the county court proceeding's surveyor, Mr Tom Fitzpatrick, was consulted during site meetings and at the telephone, in respect of the works to be carried out.
36. A copy email to Mr Dunmall in which it was stated that Mr Fitzpatrick, subject to comments he had made on 28<sup>th</sup> October 2011, had no technical objection to the proposals was produced.
37. In the oral evidence Mr Colinson described the various steps taken to consult with the lessees. All of the estimates were in the estate manager's office and were available for inspection by the lessees. This office is close to Lime Court, and is open during working hours between Monday and Friday. None of the lessees inspected these. No observations were made. Only one telephone call was received. The works commenced in August 2012.
38. Mr Colinson gave a detailed account of the history of water ingress problems at Lime Court in particular in respect of flat 42. He described the problems encountered during the works and the discovery of the necessity for additional works and reasons therefore. Amongst other documents in the hearing bundle was a report from Sandberg, consulting Engineers. Dated 17<sup>th</sup> November 2010 to which Mr Colinson referred. In September 2012 advice was obtained from Mr Steve Pearson of Angell Thompson & Partners, Chartered Structural Engineers. Additional scaffolding was erected to facilitate investigation of the problems. Mr Colinson described works undertaken and referred to photographs included in the hearing bundle by way of explanation. Variation orders were issued for the necessary additional works.
39. Mr Dunmall described the various means by which the lessees were informed of situation and reasons for delay. On 29<sup>th</sup> September 2012 a notice was placed on the notice board in the block explaining the delays and a letter was sent to each of the lessees. An AGM of the applicant company was held on 29<sup>th</sup> November 2012. A newsletter was sent on 14<sup>th</sup> December 2012.
40. Mr Colinson said that the contractors have been paid, subject to a 2 1/2% retention for 6 months, for the works which are the subject of this application. Roof works have also been carried out at Lime Court.

These were subject to a separate section 20 notice and are not the subject of this application.

41. In his oral evidence Mr Dunmall explained the practical reasons for the proceeding without a further section 20 notice. During the works the outer skin of the parapet wall had been partly removed. Therefore the building was not watertight. The investigations were on-going. It was not until 19<sup>th</sup> October 2012 that Mr Fitzpatrick agreed to the design changes. If the applicant had gone out to competitive tender at that time and had undertaken the consultation process, it would not have been reasonable to have taken the scaffolding down and left the block open to the elements.
42. Mr Colinson added that it was not financially sensible to have left the scaffolding in place whilst additional section 20 consultation took place. The scaffolding belonged to the contractor, Swainland. If a different contractor was appointed for the additional works following a further section 20 consultation process, this would have added to the costs of the works overall. He had negotiated a scaffolding charge of £500 per week with Swainland, and they had agreed not to pursue a loss and expenses claim. It was therefore advantageous to use the same scaffolding and the same contractors. It was also agreed that Swainland would remain under the principal regulations as the main contractor whilst the roofing contractors carried out works and that the roofing contractors could use the welfare facilities and scaffolding. This involved Swainland incurring costs as they had to visit the site under the CDM regulations, but they did not charge for this. However, Swainland did charge for the contract overrunning.
43. Mr Dunmall said that the works were completed on or about 1<sup>st</sup> February 2013. If there had been a further section 20 consultation procedure undertaken, this would have taken about a further 115 days.
44. Mr Mortimer added that no one could foresee the problems encountered with the cavity wall.

### **The tribunal's decision**

45. Having heard evidence and submissions and considered all of the documents provided, the tribunal finds that it is proportionate and reasonable to grant and order for dispensation from the consultation requirements in section 20 of the Act.

### **Reasons for the tribunal's decision**

46. The tribunal accepts the evidence provided on behalf of the applicant, referred to above. Having identified the necessity to carry out works to the property under the obligations in the leases, the applicant formulated a scheme of works, in particular to address the problem of

water ingress to flat 42 Lime Court, highlighted in the proceedings in the Central London County Court.

47. Following initial investigations and reporting, a specification was prepared and a tender process entered into. The appropriate section 20 notices were served. A revised second stage notice was served following the suggestion of a further contractor. A contractor was appointed and works commenced. The necessity for further works was discovered. The evidence was that this was unforeseeable at the stage of the initial specification. The additional works necessary were determined following further professional advice and the works agreed to by the surveyor acting for the tenant of flat 42. There has been no suggestion in these proceedings that the further works were unnecessary and there has been no criticism of the nature or extent of the works undertaken.
48. Various reasons have been given for not restarting the section 20 consultation. At that time it became clear that additional works were necessary, the building was not watertight. The scaffolding was in place. Terms were agreed with the scaffolding contractor which were advantageous in respect of financial consequences to the lessees of the block overall. A further section 20 process would have substantially extended the duration of the works. The lessees were kept informed of the reasons for the delay in completion of the works.
49. In all the circumstances the tribunal finds that it is reasonable dispense with the requirements for consultation under section 20 of the Act in respect of the additional works.

**Application under s.20C and refund of fees**

50. No application was made under section 20C of the Act or for refund of fees.

*Anne Seitert*

Name: A Seitert

Date: 23<sup>rd</sup> July 2013



## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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 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.]

### **Section 20ZA**

- (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.

### **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;
  - (a) 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.

**Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

**Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).



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**DECISION**

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## **Decision of the tribunal**

- (1) The tribunal makes an order for dispensation as set out under the various headings in this decision.

## **The application**

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3. At the hearing the applicant withdrew its application under section 27A (and 19) of the Act, for a determination of liability to pay and reasonableness of service charges.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

5. The applicant was represented by Mr John Mortimer MinstD, MIRPM, Assoc RICS, Managing Director of John Mortimer Property Management Ltd, the managing agents. The respondents did not appear and were not represented.
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36. A copy email to Mr Dunmall in which it was stated that Mr Fitzpatrick, subject to comments he had made on 28<sup>th</sup> October 2011, had no technical objection to the proposals was produced.
37. In the oral evidence Mr Colinson described the various steps taken to consult with the lessees. All of the estimates were in the estate manager's office and were available for inspection by the lessees. This office is close to Lime Court, and is open during working hours between Monday and Friday. None of the lessees inspected these. No observations were made. Only one telephone call was received. The works commenced in August 2012.
38. Mr Colinson gave a detailed account of the history of water ingress problems at Lime Court in particular in respect of flat 42. He described the problems encountered during the works and the discovery of the necessity for additional works and reasons therefore. Amongst other documents in the hearing bundle was a report from Sandberg, consulting Engineers. Dated 17<sup>th</sup> November 2010 to which Mr Colinson referred. In September 2012 advice was obtained from Mr Steve Pearson of Angell Thompson & Partners, Chartered Structural Engineers. Additional scaffolding was erected to facilitate investigation of the problems. Mr Colinson described works undertaken and referred to photographs included in the hearing bundle by way of explanation. Variation orders were issued for the necessary additional works.
39. Mr Dunmall described the various means by which the lessees were informed of situation and reasons for delay. On 29<sup>th</sup> September 2012 a notice was placed on the notice board in the block explaining the delays and a letter was sent to each of the lessees. An AGM of the applicant company was held on 29<sup>th</sup> November 2012. A newsletter was sent on 14<sup>th</sup> December 2012.
40. Mr Colinson said that the contractors have been paid, subject to a 2 1/2% retention for 6 months, for the works which are the subject of this application. Roof works have also been carried out at Lime Court.

These were subject to a separate section 20 notice and are not the subject of this application.

41. In his oral evidence Mr Dunmall explained the practical reasons for the proceeding without a further section 20 notice. During the works the outer skin of the parapet wall had been partly removed. Therefore the building was not watertight. The investigations were on-going. It was not until 19<sup>th</sup> October 2012 that Mr Fitzpatrick agreed to the design changes. If the applicant had gone out to competitive tender at that time and had undertaken the consultation process, it would not have been reasonable to have taken the scaffolding down and left the block open to the elements.
42. Mr Colinson added that it was not financially sensible to have left the scaffolding in place whilst additional section 20 consultation took place. The scaffolding belonged to the contractor, Swainland. If a different contractor was appointed for the additional works following a further section 20 consultation process, this would have added to the costs of the works overall. He had negotiated a scaffolding charge of £500 per week with Swainland, and they had agreed not to pursue a loss and expenses claim. It was therefore advantageous to use the same scaffolding and the same contractors. It was also agreed that Swainland would remain under the principal regulations as the main contractor whilst the roofing contractors carried out works and that the roofing contractors could use the welfare facilities and scaffolding. This involved Swainland incurring costs as they had to visit the site under the CDM regulations, but they did not charge for this. However, Swainland did charge for the contract overrunning.
43. Mr Dunmall said that the works were completed on or about 1<sup>st</sup> February 2013. If there had been a further section 20 consultation procedure undertaken, this would have taken about a further 115 days.
44. Mr Mortimer added that no one could foresee the problems encountered with the cavity wall.

### **The tribunal's decision**

45. Having heard evidence and submissions and considered all of the documents provided, the tribunal finds that it is proportionate and reasonable to grant and order for dispensation from the consultation requirements in section 20 of the Act.

### **Reasons for the tribunal's decision**

46. The tribunal accepts the evidence provided on behalf of the applicant, referred to above. Having identified the necessity to carry out works to the property under the obligations in the leases, the applicant formulated a scheme of works, in particular to address the problem of

water ingress to flat 42 Lime Court, highlighted in the proceedings in the Central London County Court.

47. Following initial investigations and reporting, a specification was prepared and a tender process entered into. The appropriate section 20 notices were served. A revised second stage notice was served following the suggestion of a further contractor. A contractor was appointed and works commenced. The necessity for further works was discovered. The evidence was that this was unforeseeable at the stage of the initial specification. The additional works necessary were determined following further professional advice and the works agreed to by the surveyor acting for the tenant of flat 42. There has been no suggestion in these proceedings that the further works were unnecessary and there has been no criticism of the nature or extent of the works undertaken.
48. Various reasons have been given for not restarting the section 20 consultation. At that time it became clear that additional works were necessary, the building was not watertight. The scaffolding was in place. Terms were agreed with the scaffolding contractor which were advantageous in respect of financial consequences to the lessees of the block overall. A further section 20 process would have substantially extended the duration of the works. The lessees were kept informed of the reasons for the delay in completion of the works.
49. In all the circumstances the tribunal finds that it is reasonable dispense with the requirements for consultation under section 20 of the Act in respect of the additional works.

#### **Application under s.20C and refund of fees**

50. No application was made under section 20C of the Act or for refund of fees.

Name: A Seifert

Date: 23<sup>rd</sup> July 2013

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### 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 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.]

### **Section 20ZA**

- (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.

### **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;
  - (a) 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.

**Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

**Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).