FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LDC/2014/0009**
Property	:	**268 King Street, Hammersmith, London W6 0SP**
Applicant	:	**Banbury Properties Ltd**
Representative	:	**Lynch, Hall & Hornby solicitors**
Respondents	:	**Henry Buckley (Flat 1)** **James Buckley (Flat 2)** **Sally Aisher (Flat 3)**
Type of Application	:	**Dispensation from consultation regulations**
Tribunal Members	:	**Judge Nicol** **Mr A Ring**
Date and venue of Hearing	:	**21st March 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21st March 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the Applicant dispensation from the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks dispensation from the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act"). The lessees of the three flats in the subject building oppose the application.

The hearing

2. At the hearing of the application on 21st March 2014 the Applicant was represented by Mr Graham Sharpe of Lynch, Hall & Hornby solicitors. Mr Akhil Chaudhury, an officer of the company, and Mr Eric Davies CEng MIStructE MRICS, the Applicant's structural engineer, also attended and gave evidence. Two of the Respondents, Mr Henry Buckley and Ms Sally Aisher appeared in person while the third, Mr James Buckley, had sent in short written representations.

3. Ms Aisher and Mr Henry Buckley informed the Tribunal that they had not seen the hearing bundle prepared by Lynch, Hall & Hornby although Mr Sharpe assured the Tribunal copies had been sent to them at the subject property. Ms Aisher also said she had not seen some of the documents in the bundle before. After Mr Sharpe had presented the Applicant's case, the Respondents were given 20 minutes to consider their position. They decided to carry on without seeking an adjournment.

The background

4. The property which is the subject of this application has commercial premises on the ground and basement floors with three floors of residential accommodation above. On 1st August 2011 the Applicant granted a lease to Spring Street Developments Ltd to develop the residential floors into three flats. Having sold the completed flats to the Respondents, Spring Street sold their interest back to the Applicant on 29th April 2013 for a nominal £1.

5. Unfortunately, it appears the development was not done properly, despite being signed off by the building control department of the London Borough of Hammersmith & Fulham. By letter dated 9th January 2014 the Borough's building control officer, Nicholas Osborne, notified the Applicant that the chimney to the rear of the subject building had started to come away from that of the adjoining property, no.270. The letter also stated that the matter had been brought to the Applicant's attention so that they may take steps to remedy the defect and avoid action having to be taken by the Borough by way of service of a Dangerous Structures Notice. The letter was copied to Ms Aisher.

6. Mr Chaudhury consulted his usual contractors. They were unavailable but recommended Skylight UK Contractors Ltd to whom they apparently sub-contracted on occasion. On Saturday 11th January 2014 Skylight met Mr Davies at the property and discussed what needed to be done.

7. Mr Davies then wrote letters on the same day to both the Applicant and the Borough. He stated that he had inspected the chimney stack and found it to be in a dangerous condition because it had parted company from the adjoining stack and was leaning in towards no.268. He thought that ineffective support to the stack had given way.

8. Also on the same day, Skylight provided a quote for remedial works at a price of £10,540. (An alternative quote was obtained from London Space Masters but it is not clear how much consideration was given to it.) Mr Davies had not compiled the list of works used in the quote but regarded them as resulting from his discussion with Skylight. They included the erection of scaffolding, removing the existing flat and slate roof, removing the chimney, rebuilding the parapet and fitting a new fibre glass roof. In due course, all the works were done apart from fitting a new fascia and guttering.

9. On 13th January 2014 Mr Chaudhury e-mailed the Respondents to inform them what was happening. He attached the Borough's letter of 9th January 2014 and stated,

> Clearly we are obliged to take urgent action to safeguard the structure of the building to ensure firstly that any potential danger to anyone in the building is neutralised, and secondly that no further damage arises.
>
> You need to be aware that the costs involved will be significant and that this will form part of the service charge and therefore payable by the flat owners. The initial estimate of costs is approximately £11,000 excluding professional fees. As the matter is so urgent we do not have the opportunity of consulting with you as we would ordinarily where major expenditure is involved.

10. Mr Henry Buckley responded by e-mail later the same morning saying that 3 different quotes would be needed and asking how the bill would be allocated between the neighbouring properties and between the lessees. Ms Aisher responded the following day that she agreed matters needed to move quickly but she agreed with Mr Buckley about getting more than one quote. She also said her tenants had moved out for their safety.

11. By e-mail on 14th January 2014 Mr Henry Buckley pointed out that the neighbouring property had had scaffolding up for some time to install a new loft and saying he was sure the problem was their fault. Mr

Chaudhury passed this on to Mr Davies who stated that the problem was inadequacy of support and that no.270 was not responsible for the movement.

12. Ms Aisher e-mailed Mr Chaudhury twice on 15th January 2014 seeking more information and was surprised to find the following day that work had already started. She had driven all the way up from Bath to meet a roofer, Dave, to get an alternative quote. He viewed the roof from her window and reckoned he would have done the work for £3-5,000 but refused to put anything in writing.

13. In the meantime, a problem arose with the chimney stack. The Applicant's original intention had been not to replace it but Mr Osborne indicated that this would require planning permission due to the property being located in a conservation area. This was confirmed by the Applicant's own planning consultants and so Skylight quoted a further £1,750 for that work. On Mr Davies's advice, the Applicant proceeded with that work immediately because they felt that the alternative would be disproportionate, namely taking down the scaffolding, consulting fully and then re-erecting the scaffolding to re-build the chimney stack. Moreover, the weather was windy and rainy at the time which would have presented difficulties in adequately covering the roof in the interim.

14. Meanwhile, by e-mail on 16th January 2014 Mr Henry Buckley asserted that a friend of his had climbed the scaffolding and opined that he could have fixed the problem with a single bag of cement for £40. Mr Davies explained to the Tribunal that this would not have remedied the problem of the leaning chimney stack and parapet and that scaffolding was essential in this situation for the health and safety of the contractors. He inspected the property on 16th and 18th January 2014 and was content with the works.

15. By e-mail on 17th January 2014 Ms Aisher complained that she had not been able to get an alternative quote and needed to know what was going on. Mr Chaudhury replied by e-mail dated 20th January 2014 enclosing Mr Davies's letters of 11th and 16th January 2014 containing his expert advice. He also enclosed the legal advice from Lynch, Hall & Hornby and Skylight's quote for the chimney stack.

16. The current application was then issued on 20th January 2014. The Applicant has paid Skylight's final invoice but has yet to send out service charge demands to the Respondents pending determination of this application and also due to the fact that regular service charge demands are shortly to be issued anyway when the service charge year ends on 31st March 2014

The law

17. Section 20 of the 1985 Act and the regulations made under it, the Service Charges (Consultation Requirements) (England) Regulations 2003, require a landlord carrying out works which will cost a service charge payer more than £250 to go through a specific consultation process before commencing the works. That process contains two consultation periods of 30 days which means that compliance with the regulations will take a minimum period in excess of two months.

18. The Tribunal has the power to dispense with the consultation requirements under section 20ZA of the 1985 Act if satisfied that it is reasonable to do so. According to the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854, the purpose of s.20ZA is to ensure tenants are not required (i) to pay for services which are unnecessary or defective and (ii) to pay more than they should. Therefore, the Tribunal considering this issue should focus on the extent to which the lessees were prejudiced in either respect by a failure to comply with the requirements. If the extent, quality and cost of the works were not affected, it is difficult to see why dispensation should not be granted unless there is some very good reason.

Tribunal's decision

19. The Respondents' principal complaint is that they were not consulted and no efforts were made to obtain, or allow them to obtain, alternative quotes. They had no complaint about the extent or quality of the work.

20. The problem for the Respondents is their lack of evidence. In contrast to Mr Davies's firm evidence to the Tribunal that the work could not be delayed, Ms Aisher said Mr Osborne had told her the work was not so urgent that alternative quotes could not be obtained. It is impossible to know what period Mr Osborne had in mind – he was not available to be questioned. The Applicant was unaware of Mr Osborne's opinion and had relied, very reasonably, on Mr Davies's professional opinion.

21. Further, the issue for the Tribunal is not whether the Respondents could have been consulted a little more, but whether the statutory requirements should be dispensed with. At best, the Respondents' case amounts to an assertion that the work could have been put off for a few days. This would still not have been enough time to carry out the statutory consultation process and so cannot affect the decision to dispense.

22. As to prejudice, Ms Aisher relied on the aforementioned Dave and another roofer, Rob, who looked out of her window at the work after it had been completed and said he could have done it for £4-6,000. Again, he refused to put anything in writing – the Tribunal cannot see any good reason why he would so refuse. In contrast, while Mr Davies eschewed any expertise on costings, he relied on his experience to tell both the Applicant and the Tribunal that he thought Skylight's price

was reasonable, particularly given that they had to be carried out urgently. Ms Aisher's evidence cannot be preferred in these circumstances.

23. Having said that, the Tribunal is only considering dispensation from the consultation requirements. Nothing in this decision affects the Respondents' right to bring an application under section 27A of the 1985 Act challenging the reasonableness of the cost of the works, for which new evidence may be adduced.

24. In all the circumstances, the Tribunal accepts the Applicant's assertion that they had no choice but to proceed with the work urgently. It would be unreasonable for the Tribunal to refuse the application for dispensation on the basis that the communication between the parties was less than perfect. Further, the Respondents have not been able to establish on the evidence that they suffered any prejudice.

Application under s.20C

25. In a separate application Ms Aisher applied for an order under section 20C of the 1985 Act that the Applicant's costs of these proceedings should not be added to her service charge. Assuming that the lease gives them the power to do so, Mr Sharpe indicated that the Applicant intended to recover their costs in this way. The Tribunal sees no reason to deny the Applicant such a contractual right. The Applicant has succeeded in the application. The Tribunal is satisfied that, in the light of the Respondents' opposition, the Applicant had no choice but to make this application.

Conclusion

26. For the reasons set out above, the Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements and it would not be just or equitable to make a s.20C order.

Name: NK Nicol **Date:** 21st March 2014