



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

**Case Reference** : **LON/00AZ/LDC/2017/0125**

**Property** : **18, Peters Path, Wells Road,  
Sydenham, London SE26 6LD**

**Applicant** : **London Borough of Lewisham**

**Representative** : **Clarke Wilmott Solicitors**

**Respondents** : **Mrs Manami Williams**

**Representative** : **None**

**Type of Application** : **For dispensation of the  
consultation requirements under  
section 20ZA**

**Tribunal Member** : **Judge S O'Sullivan**

**Date of Decision** : **19 December 2017**

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**DECISION**

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17-30 Peters Path on or around 19 March 2014. The consultation process proceeded and no comments or observations were said to have been received and the works commenced in June 2014.

8. The applicant says that the Notice of Estimate was sent to the respondent on or around 26 August 2017 following an enquiry made by a Mr Williams at a drop in session about Decent Homes work on 5 August 2014. The Notice of Estimates when sent however contained the Schedule of works for 1-16 Peters Path rather than 17-30 Peters Path. However the applicant says that the works to both blocks were of a similar nature with the estimate cost of 17-30 at £139,537 and to 1-16 at £166,327.

### **The Respondent's position**

9. The respondent made a statement setting out why she opposed the application which attached various documentation.
10. The respondent purchased the property on 8 March 2013. The respondent says that the applicant failed to serve any consultation notice whatsoever for the major works. She acknowledges that when she purchased the property she was provided with Notices of Proposal to enter into longterm contracts for major works. She submits that both documents represent a single stage of notice and state "*Lewisham Homes will keep you updated regarding any future major works. Before any works take place we will provide leaseholders with a full description of works and estimated costs...If any job under the long term contract will cost more than £250 per leasehold property then by law we must carry out further consultation with the leaseholders who will be required to contribute to the cost. To do this we will send you another Section 20 consultation notice which will include specific details of the works proposed and an estimate of costs. Leaseholders will have the right to make written observations on the proposed works and costs.*"
11. The respondent says she was told no works were planned and on this basis decided to proceed with her purchase. She further says that if notice of the imminently pending works would have been issued she would not have purchased the leasehold or would have negotiated a discount from the previous leaseholder.
12. The respondent also says that if given the chance to take part in the consultation she would have wanted a say in the scope of the works. She believes that the Council stock was upgraded as part of these works and that the landlord has refused to supply invoices. She also says that the works were not carried out to a reasonable standard.

basis of the documentation provided that the required consultation appears to have taken place and the QLTAs were in place prior to the assignment of the respondent's lease. The respondent's predecessor was properly consulted and served with the required notices. Copies of the Notices of Proposal in relation to the QLTAs were clearly provided to the respondent on her purchase as she makes full reference to them. The respondent therefore did not suffer any prejudice on her purchase of the property as the QLTAs were properly in place and any advice on their implications would have been a matter for her conveyancing solicitors.

19. The application for dispensation concerns the Notice of Estimates which should have been served on the respondent in or around 19 March 2014. In relation to this notice the respondent says that she would have liked to have a say in relation to the scope of the works. However her statement does not raise any issues as to how she would have commented on the scope of the works themselves. This ground appears limited to a reference to the alleged upgrade of the Council stock, this is a matter which would be better addressed by a challenge to the payability and reasonableness of the works under section 27A when the final account is issued. The respondent also makes reference to the quality of the works. Again this decision does not concern the issue of whether the service charge costs are reasonable and payable and those costs may be the subject of a future challenge under section 27A of the 1985 Act.
20. The issue of the section 20B notices is not relevant to the application for dispensation as that is relevant to payability and the tribunal makes no finding in that regard.
21. The tribunal is satisfied on the basis of the evidence before it that the respondent has not suffered any prejudice by the applicant's failure to serve the Notice of Estimates in a timely fashion.

#### **Application for an order under section 20C**

22. The respondent applied for an order under section 20c. By letter dated 7 December 2017 solicitors for the applicant confirmed that the applicant does not seek its costs of the application. In such circumstances the tribunal makes an order under section 20C.

**Name:** S O'Sullivan

**Date:** 19 December 2017

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

**Case reference** : **LON/00AJ/LSC/2017/0090**

**Property** : **38 Connell Crescent, Ealing  
London W5 3BL**

**Applicant** : **Brickfield Properties Limited**

**Representative** : **GSC Solicitors**

**Respondent** : **1. The Personal Representatives of  
Bridget Theresa O’Leary  
(Deceased)  
2. Mr Gerald O’Leary**

**Representative** : **N/A**

**Type of application** : **For the determination of an alleged  
breach of contract**

**Tribunal members** : **Judge Carr  
Mr Sennett**

**Date and venue of  
hearing** : **23<sup>rd</sup> November 2017  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **19 December 2017**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the Respondents are in breach of the following covenants in the lease
  - a. Clause 2(6)
  - b. Clause 2(7)
  - c. Clause 2(8)
- (2) The tribunal makes the determinations as set out under the various headings in this Decision

### **The application**

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 (The Act) as to whether the Respondents are in breach of various covenants under the lease.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant was represented by Ms Faith Julian of Counsel. Ms Xu, from the instructing Solicitors was present at the hearing. Mr Gerald O'Leary of the Respondent appeared in person.

### **The background**

4. The property which is the subject of this application forms part of a two-storey house, split into two flats. The Property is situated on the ground floor.
5. Photographs of the building were provided in the hearing bundle. 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.
6. The Respondent holds a long sub-lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge and to perform various

covenants. The specific provisions of the sub-lease and will be referred to below, where appropriate.

### **The issues**

7. The issues before the tribunal are as follows:
  - (i) Does the lease include the covenants relied on by the Applicant and
  - (ii) That if proved the alleged facts constitute a breach of those covenants.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **The relevant clauses of the lease**

#### **9. Clause 2(6):**

'Once in every third year of the said term and also during the last year thereof to paint at a time and in a colour to be appointed by the Surveyor for the time being of the Lessor all the outside wood and iron work of the demised premises and all additions thereto with two coats of good oil and white lead paint in a proper and workmanlike manner'.

#### **10. Clause 2(7):**

'Once in every fifth year of the said term and also during the last year thereof to paint all the interior of the demised premises and all additions thereto usual or proper to be painted with two coats at least of good oil and white lead in a proper and workmanlike manner

And also at such times at last aforesaid to grain varnish whitewash colour and paper such parts of the interior of the demised premises as are usually so treated'.

#### **11. Clause 2(8):**

'From time to time and at all times during the said terms well and substantially to repair uphold support cleanse maintain drain amend and where necessary rebuild and keep the demised premises and in particular the rafters or other support for the floor of the Upper Maisonette and all new buildings which may at any time during the said term be erected on and all additions made to the demised premises and the fixtures therein and all party and other walls and fences sewers

drains pathways passageways easements and appurtenances thereof with all necessary repair and cleanings and amendments whatsoever'

### **The evidence before the tribunal**

12. Counsel for the Applicant explained the background to the sub-lease that is the subject of the Application and drew the attention of the tribunal to the clauses set out above. In Counsel's submission the covenants are very wide.
13. Counsel presented the report of Gary Jacobs MRICS of Evolution. In summary the report concluded that the property was in substantial disrepair requiring urgent attention to prevent further deterioration. A number of photographs were included in the report demonstrating the extent of the disrepair.
14. There was some evidence that some very limited works had been done to the property, following contact from the Applicant, but insufficient to remedy the considerable deterioration.
15. Mr O'Leary did not dispute the evidence before the tribunal or make any argument in connection with the clauses of the lease.

### **The decision of the tribunal**

16. The tribunal determines that there has been clauses 2(6), 2(7) and 2(8) of the lease have been breached.

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

17. The tribunal relies on the contents of the report to find that there have been breaches of clauses of the lease. The tribunal notes that there is no dispute about the breaches.
18. The Respondent is urged to seek legal advice in connection with this matter.

**Name:** Judge Carr

**Date:** 23<sup>rd</sup> November 2017

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **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 the appropriate 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 the appropriate 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) 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.
- (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 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **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;
  - (aa) 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.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

### **Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).