



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

|  |   |   |
|--|---|---|
| <b>Case Reference</b>                  | : | <b>CAM/00MF/LDC/2015/0014</b>   |
| <b>Property</b>                        | : | <b>1-9 Butcher's Row and 15-17 High Street, Twyford, Berkshire, RG10 9TW</b>  |
| <b>Applicant</b>                       | : | <b>Thames Valley Charitable Trust Housing Association Limited</b>   |
| <b>Representative</b>                  | : | <b>Penningtons Manches LLP</b>  |
| <b>Respondents</b>                     | : | <b>(See Schedule 1 attached to these Reasons)</b>   |
| <b>Representative</b>                  | : |   |
| <b>Type of Application</b>             | : | <b>To dispense with the statutory consultation requirements</b>   |
| <b>Tribunal Members</b>                | : | <b>Mrs H Bowers, MRICS<br/>Judge J Oxlade</b>   |
| <b>Date and venue of Consideration</b> | : | <b>29 October 2015, at Reading Magistrates Court &amp; Family Court, Castle Street, Reading, Berkshire, RG1 7TQ</b> |
| <b>Date of Decision</b>                | : | <b>25 November 2015</b>   |

---

**DECISION**

- The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 to the extent described in the order attached to this decision.
  - An order is made under section 20C of the Landlord and Tenant Act 1985 that any costs that the Applicant has incurred in respect of this application are not to be treated as "relevant costs" in respect of future service charges.
-

## **REASONS**

### **The Application**

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) dispensing with statutory consultation in respect of major works.

2. 1-9 Butcher’s Row and 15-17 High Street, Twyford, Berkshire, RG10 9TW (the subject development) is described as a mixed commercial and residential development. One element is a Grade II listed building comprising one commercial unit and three residential units. The second element is a purpose built block of seven residential units.

3. The application was dated 1 October 2015 and received on 7 October 2015. The Tribunal issued on 8 October 2015.

4. The application form stated that the application was urgent as the structural timbers of the property had been infected with deathwatch beetles and the rear external wall was structurally unsound. It was stated that the works are to be carried out as soon as possible as the decay is increasing the risk of structural failure. The application describes the works as the extermination of timbers infected with deathwatch beetles and the damaged timbers to be repaired and that oak joists between the structural timber in the rear wall need to be reconstructed. The full scale of what work is needed is currently unknown. The work is described as highly specialist and to date it had not been possible to obtain a reliable quote. A number of meetings had been arranged with the leaseholders but given the unknown extent of the works it had not been possible to carry out any formal consultation.

5. Two separate bundles were provided to the Tribunal before the hearing. The Applicant’s counsel also provided a copy of a draft order, which was considered during the course of the day and will be referred to in the main body of this decision and a draft statutory notice.

### **Inspection:**

6. The Tribunal carried out an inspection of the subject property on the morning of 29 October 2015. The Tribunal were accompanied by Ms L Mattsson, counsel for the Applicant; Mr N O’Rourke, the Assistant Director of Property & Asset Management with Thames Valley Housing Association (TVHA); Ms G Kaa, the Home Ownership Manager of TVHA; Mr R Oxley of Oxley Conservation; Mr J Woods and Mrs Woods (9, Butchers Row) and Miss Budden (17, High Street). After the inspection was completed, Mr D White (2

Butchers Row) approached the Tribunal and indicated that he was to attend the hearing.

7. Mr Oxley provided a guided inspection of the relevant parts of the development. The development consists of a conversion of some listed buildings that now provides one commercial unit at 15 High Street, a three storey building occupied by Wentworth's Estate Agents; 17, High Street a basement and ground floor unit and 9 Butchers Row a first and second floor unit situated above 17 High Street. 1-7 Butchers Row is a purpose built block and 8 Butchers Row is a converted property. Whilst all of these buildings form the development, the focus of the inspection was on 15 and 17 High Street and 9 Butchers Row.

8. At the rear of the relevant parts of the development is the south façade, a three-storey wall plus a semi-basement area. This is the rear wall to 17 High Street and 9 Butchers Row. This is part of the original timber framed, medieval building. The timber frame is in-filled with brick panels. There is a variety of timber elements and some evidence of historic decay and patch repairs. There is no evidence of current activity from deathwatch beetle. However, there are concerns about the detailing and stability of the timber frame, how the brick panels have been secured into the frames and the consequences of using a cement mortar in the brick panels. The inner surface of this wall is dry lined and as a consequence it has not been possible to identify the extent of any structural issues behind the lining. This south façade faces onto a rear courtyard area with limited pedestrian access.

9. The east façade is also a three-storey wall that fronts onto a pedestrian walkway. It is the side-wall to 15, High Street. It is a timber framed wall with cement based, rendered in-fill panels. The joints between the studs and the collar and tie beams show historic decay, with a diminished timber surface area and cracking to the timber. The consequence is that the structural strength of the frame is undermined. There is evidence of mastic repairs. The nature of the materials used will further undermine the structural integrity, as damp arising from the use of these materials will be likely to accelerate further decay. The Tribunal made a limited inspection of the interior of the second floor attic area at 15 High Street. The internal wall to the east façade was observed and an exposed area to direct daylight and water staining was noted.

10. The north façade that fronts onto the High Street is slightly set back from the pavement. The wall of the front of 17 High Street/9 Butchers Row is three-storey and is fully rendered with no external sign of the timber framing behind. However, on closer examination there cracks to the render that possibly follow the timbers of the frame and some areas show a weakness over an area of the render that may be an indication of the render losing its key

with the wall behind. Temporary shoring is in place at the ground floor level. A brief internal inspection was made of 9 Butchers Row. The Tribunal was shown the window on the first floor living room on the north façade. We were informed that on occasions there had been water coming fall from the top of the window frame. There was no indication of the source of the water. On the second floor front bedroom to the north façade we observed the interior face of the timber frame and could see the flight holes from the death watch beetle infestation. There had been problems with damp and mould, but the mould had been cleaned away and had not returned.

**Chronology:**

11. From the papers the Tribunal extracted the following chronology that did not appear to be disputed. The site was acquired by TVHA in 1999 and developed into the current scheme between purchase and 2001. Wokingham District Council signed off a Certificate of Completion on 17 September 2001. Leases were granted to the various units in 2000/2001. The property was transferred to the Applicant in 2012.

12. In March 2014 the owner of 9 Butchers Row discovered an infestation of deathwatch beetles. Pest UK were contracted in March and May 2014 to eradicate the problem. There were concerns about the structural integrity of the timbers and an area surveyor for TVHA attended in June 2014, followed by an inspection of Faithorn Farrell & Timms LLP (FFT) in August 2014 when further evidence of deathwatch beetle was observed. A report was produced in September 2014.

13. An inspection was carried out by Mr Oxley and Mr Stephens of Wokingham Borough Council on 2 December 2014 and was followed by a report prepared by Mr Oxley and dated 5 December. Amongst other matters this report identified that there were serious concerns with the structural performance of the timber frame on the north façade. It also identified that without extensive repair and replacement the gable on the south façade would rapidly deteriorate. At this time a very approximate estimate was obtained as to the likely costs of the work that was in the region of £322,886.

14. A further inspection occurred on 13 February 2015 and the findings reported on 17 February 2015. Again this report identified that the structural timbers to the north, south and east gables were in poor and potentially unstable condition. That without extensive repairs, including the removal of impermeable materials the building historic timbers would continue to decay. It was recommended that extensive repairs should be carried out to the north, south and east gables to reinstate structural integrity to the building and the traditional 'breathing' performance of the building fabric.

15. On 10 April a letter was sent to all the leaseholders in the development to inform them that there were problems with the structural timbers to the historic part of the development and that the initial estimate was in the region of £350,000. A further letter was sent out to the leaseholders on 1 July 2015 providing a brief update.

16. An interim report was provided by Mr Oxley on 6 August 2015. Robert J Bates & Associates were commissioned to undertake the drawing of specialist building plans and sections of the relevant parts of the development. These plans were provided on 1 September 2015.

17. On 6 October 2015 cracking was noted to the north façade. Sketch plans for a propping scheme were provided and props were subsequently installed, as noted on the inspection. As indicated above the Applicant submitted its application on 7 October 2015. Letters were sent to the leaseholders on 15 October 2015. This letter provided an update and an explanation as to the application made to the Tribunal. The letter provided a brief timetable and suggested that the work would not commence until after 1 March 2016. A further letter was sent on 16 October 2015 to explain that propping work was needed to the north façade and that work would be undertaken in the week commencing 19 October 2015.

### **The Hearing:**

18. All those present at the inspection also attended the hearing. In addition Mr A and Mrs J Burton (5 Butchers Row) and Mrs C Holyoake the mother of Miss A Holyoake (8 Butchers Row) attended. Mr White did not attend the hearing but had indicated that he was content for his interest to be represented by the leaseholders who did attend the hearing.

19. Mr Oxley was of great assistance to the Tribunal in explaining the issues surrounding this project. He explained that as much of the structural elements were currently covered he had to second-guess the extent of the works. Accordingly he will need to include several provisional items in the specification to reflect what may be exposed in due course. Accordingly there will be some additions and some omissions to the final price. The first third of the project will allow exposure of some of the elements and will improve the level of certainty, but only on completion of the project will there be full certainty as to the scope.

20. Before works commence it will be necessary to appreciate the expectations of the parties and distinguish between essential and cosmetic works. A full specification will be prepared and this is the contract document that will be priced by those submitting tenders. The contract will make provision for some contingency sums. The final tender price may seem

inflated, but will anticipated most of the works and hopefully will be reduced once the full extent of the works is ascertained. Mr Oxley considers that he has currently anticipated 70 – 80% of the works and has highlighted high-risk items. In response to a question as to whether it would be prudent to do some opening up to improve certainty in the contract, Mr Oxley responded that once some areas had been exposed it would necessary to respond directly to those aspects. It is the nature of this type of project that some associated works will arise. Again in response to concerns from Mr Burton, it was explained that any additional works would be carried out if necessary. It is anticipated that Mr Oxley will oversee the project and there will be a monthly evaluation of the scope of the works. This monthly evaluation can be shared with the leaseholders.

21. Mr Oxley was questioned as to whether there would be any benefit to the phasing of the works, given the three distinct elements. In his professional opinion it would be best to undertake all the work in one project and to identify all the issues and respond accordingly. As to the pricing, it would be best to get the specification sent out to the possible contractors and get the tender prices. Mr Oxley stated that he could complete the necessary specifications for tender purposes by 19 November 2015. It was suggested that an outline specification of works with supporting documents could be provided by 6 November 2015. There will be some contact with the Conservation Officer of Wokingham Borough Council and Mr Oxley anticipated that he would to continue that liaison.

22. Mrs Woods asked Mr Oxley about how safe the wall on the south façade and he responded that he did not have total confidence in the wall and that as a temporary measure building straps could be put in place.

23. Miss Mattsson stated that whilst not seeking a blanket dispensation, there were concerns as to what would be found once the work commenced and parts of the structure were revealed. It was emphasised that the necessary work must be undertaken but at the best possible price. The Applicant was seeking to pursue a curtailed consultation process. However, the main concern was that the Applicant should not be obliged to cease works in the middle of the project and to make a further section 20ZA application for dispensation against any unanticipated works. The tribunal explored this aspect with Miss Mattsson and suggested that it would not be necessary for works to cease whilst any further dispensation was sought. Mr Oxley expressed the view that whilst it would be ideal to obtain the dispensation for the full scope of the works, there may be some scope for works to continue whilst further dispensation was sought.

24. All the leaseholders understood the need to progress the works as quickly as possible and that the development to be made structurally sound and safe for the inhabitants. They were dismayed at the various delays that have occurred and the lack of communication from the Applicant. In general they supported the application for dispensation, but on limited grounds. However, there were concerns about the cost of the works and the potential widening of the specification to include items that were unnecessary.

25. The Applicant had produced a draft order that provided a curtailed consultation process. The parties took some time out of the hearing to discuss and agree the contents of the order. Most of the order was agreed although the parties required the Tribunal to determine a number of specific points. However, there was a subsequent discussion of the outstanding points and various solutions were proposed. As a consequence the parties reached agreement on the majority of the wording. Miss Mattsson undertook to provide a clean copy of the agreed order. This Draft is attached to these reasons in Schedule 2, subject to some minor amendments by the Tribunal.

26. One of the steps set out in the agreed order was that the Applicant was to serve the Notice of Intention on 30 October 2015.

27. The leaseholders made an application under section 20C of the Act, for an order that any of the Applicant's costs arising as a consequence of this application should not be treated as "relevant costs" for service charge purposes.

28. The Applicant's position is that it is anticipated that legal costs in respect of the application would amount to £5,000. The Applicant was not willing to concede to a section 20C order. It is their position that although not urgent the works were complex and hence the need to make the application. Dealing with the timescales, it was stated that the Applicant was a large organization and that advice from solicitors was sought in June/July 2015. Ms Mattsson had reviewed the file and drafted the application. In her opinion the file had suggested that this was an urgent case. It is accepted that Ms Mattson had erroneously thought that meetings that had taken place, related to meetings with the leaseholders. It was the Applicant's position that a section 20Za application would have been necessary at some stage.

29. The leaseholders noted that the application form stated that the works were urgent. However, the issues had been identified several months previously. It was accepted that there was urgent propping works to the front façade. The sum of £5,000 was not reasonable, especially given the communication process to date. Concerns were raised about the extent of the fees of the experts in this case.

## **Determination**

30. Section 20ZA(1) of the Act provides:

*“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.”*

31. The Tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

32. As explained by the Tribunal this application is only a consideration of whether it would be appropriate to dispense with all or part of the dispensation process. A number of issues raised by the parties would be more properly addressed in any application made under section 27A of the Act. This decision does not affect the Tribunal’s jurisdiction upon any subsequent application in respect of the reasonable cost of the work. Essentially the parties were able to reach an agreement about the extent of the consultation that is to take place. Their agreement is recorded in the order attached to these reasons. The Tribunal gives dispensation to the extent of what is agreed in that order.

33. The Tribunal now turns to the section 20C application. The leaseholders queried the costs of the experts and their involvement in the case to date. The current application has a limited scope and the general costs of any expert in producing reports, specification and any other services, would be more properly considered under a section 27A application. At present the Tribunal is concerned with the costs of the section 20ZA application and that would be the legal costs, identified at £5,000 and potentially the costs involved with Mr Oxley’s attendance at the inspection and the hearing, together with any direct costs incurred by the Applicant. The Tribunal does not accept the submissions made by the Applicant that a section 20ZA application would have been necessary at some point during the project. In coming to this view the Tribunal would comment that it has had a pragmatic view in granting dispensation in an attempt to remove any barriers from the commencement of the project. The Applicant was made aware of the problems at the development some 18 months previously. Problems regarding the structural integrity were noted nearly one year ago and further reports were commissioned identifying structural problems at the development. The Applicant has been slow in reacting to these important indicators. The communication process has been poor. The Tribunal can only hypothesize, but if the Applicant had taken immediate steps to engage with the project, had



sent out Notices of Intention at a far earlier stage and provided a more open communication policy with the leaseholders, then a section 20ZA application could have been limited to any urgent works as a consequence of what may be found after exposure of the building's structure. A more prompt response may have also resulted in such an application being made with the full support of the leaseholders and thereby minimising any costs. On the facts that the Tribunal is currently considering, Miss Mattsson has not satisfied the Tribunal that a section 20ZA was inevitable. Accordingly, the Tribunal makes an order that any costs in connection with this application are not to be regarded as "relevant costs" to be taken into account in determining the amount of any service charges payable by the leaseholders.

**Name:** H C Bowers

**Date:** 25 November 2015

### **ANNEX - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

**SCHEDULE 1**

|   |                   |
|---|-------------------|
| Mr K & Miss A Clark   | (1 Butcher's Row) |
| Mr D F D White  | (2 Butcher's Row) |
| Mr B Wetherall  | (3 Butcher's Row) |
| Miss Finnegan   | (4 Butcher's Row) |
| Mrs J & Mr A Burton   | (5 Butcher's Row) |
| Miss K Barnes   | (6 Butcher's Row) |
| Miss Hawkins & Mr Twyford   | (7 Butcher's Row) |
| Miss A Holyoake & the Personal Representative of the Estate of Mr S Knowles | (8 Butcher's Row) |
| Mr J A & Mrs L J Woods  | (9 Butcher's Row) |
| Mr J Gilbert & Mr A T Laflin  | (15 High Street)  |
| Miss L J Budden & Mr D Newell   | (17 High Street)  |

**SCHEDULE 2**

**IN THE PROPERTY CHAMBER**  
**EASTERN RESIDENTIAL PROPERTY**  
**FIRST TIER TRIBUNAL**

**CLAIM NO: CAM/00MF/LDC/2015/0014**

**BETWEEN:**

**THAMES VALLEY CHARTIABLE HOUSING ASSOCIATION**

**Applicant**

**-and-**

**MR K AND MISS A CLARKE (1 BUTCHERS ROW)**

**MR DFD WHITE (2 BUTCHERS ROW)**

**MR B WETHERALL (3 BUTCHERS ROW)**

**MISS FINNEGAN (4 BUTCHERS ROW)**

**MISS J BONSON AND MR A BURTON (5 BUTCHERS ROW)**

**MISS K BARNES (6 BUTCHERS ROW)**

**MISS HAWKINS AND MR TWYFORD (7 BUTCHERS ROW)**

**MISS A HOLYOAKE AND THE PERSONAL REPRESENTATIVE OF THE  
ESTATE OF MR S KNOWLES (8 BUTCHERS ROW)**

**MR J A AND MRS L J WOODS (9 BUTCHERS ROW)**

**MISS L J BUDDEN AND MR D A NEWELL (17 HIGH STREET)**

**MR J GILBERT AND MR A T LAFLIN (15 HIGH STREET)**

**Respondents**

---

**ORDER**

---

UPON the Applicant's application dated 1 October 2015 to dispense with the consultation requirements under Schedule 4 under Part 2 of the Service Charges

(Consultation Requirements) (England) 2003 (“the Regulations”) pursuant to s 20 of the Landlord and Tenant Act 1985

AND UPON the Tribunal having attended a site visit of 15-17 High Street and 9 Butchers Row (“the Building”) on 29 October 2015 to consider the application for dispensation in respect of the following works (i) reconstruct the gables of the Building to make the same structurally sound; (ii) treat the death watch beetles infestation and (iii) undertake consequential remedial works (“the Works”)

AND UPON the Respondents requesting and the Applicant agreeing to erect building straps on the south gable as soon as possible in order to ensure the structural stability of the same pending the Works

AND UPON the Tribunal being satisfied that it is reasonable to dispense with the Regulations as per the terms of this order

IT IS ORDERED THAT:

1. Save that the Applicant must follow the procedure set out in subparagraphs (1)-(13) below and comply with conditions set out below, the requirements set out in the Regulations are dispensed with in relation to the Works:
  - (1) The Applicant will on or before 30 October 2015 send the Respondents an initial notice in the form appended hereto. The said notice will invite the Respondents to provide any written observations and to nominate a person from whom the Applicant should seek an estimate for doing the Works by noon on 9 November 2015 (“the relevant period”).
  - (2) The Applicant will have regard to any observations received from the tenants within the relevant period.
  - (3) As soon as possible, but no later than 18 December 2015 Oxley Conservation’s specifications of the Works and the tendering documents shall be sent to the Respondents either by email or by post. This will be free of charge.
  - (4) As soon as possible after having received the Oxley Conservation’s specifications the Applicant will arrange a meeting and invite all of the Respondents to attend. Mr Richard Oxley will attend the said meeting to answer any questions. The meeting will take place in the evening or on a weekend.

- (5) The Applicant will obtain estimates in accordance with Reg 4 of the Regulations and provide a "paragraph (b) statement". For the avoidance of doubt estimates will only be obtained from persons nominated who have the required expertise, insurance cover and availability to undertake the Works or any part thereof. Suitability shall be determined by Faithorn Farrell Timms and Oxley Conservation whose decision shall be final. The Applicant shall use its best endeavors to obtain at least two estimates, but this requirement shall be dispensed with if using its best endeavors, it is not possible for the Applicant to obtain two estimates.
- (6) The Applicant will invite the Respondent to make, in writing, observations in relation to the estimates within 10 days of service of the "paragraph (b) statement".
- (7) The Applicant will have regard to any observations received from the tenants within the said 10 days.
- (8) As soon as possible after having appointed a contractor to undertake the Works the Applicant will arrange a meeting and invite all of the Respondents to attend. Mr Richard Oxley and/or a representative of the appointed contractor will attend the said meeting to answer any questions. The meeting will take place in the evening or on a weekend.
- (9) The Applicant shall comply with Reg 6, if appropriate.
- (10) Save for the above requirements, the remainder of the requirements under the Regulations are dispensed with in relation to the Works, in particular:
  - (i) the Applicant shall not be required to consult further in relation to any additional necessary and associated works which may be required in the reasonable opinion of Oxley Conservation, but which do not form part of the Works described in the specifications;
  - (ii) the Applicant shall not be required to consult further in relation to any urgent remedial work required in order to preserve the integrity of the Building or prevent further deterioration of the current condition.
- (11) The Applicant will pay the Respondents' legal costs in the sum of £900 upon receipt of the invoice.

- (12) The Applicant and the Respondent will cooperate to apply for any relevant grant available for the Works.
- (13) The Applicant will on a monthly basis send all of the Respondents by email or by post the monthly valuation and certificate which documents the progress and cost