



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

Case Reference : BIR/OOCQ/LDC/2015/0001

Property : Flats 1-10, Garrick Close, Hockley Lane, Eastern Green,
Coventry, West Midlands, CV5 7NQ

Applicants : Garrick Management Company Ltd.

Representative : Shakespeares

Respondent : Various Lessees – as set out in the attached Schedule.

Type of Application : An application to dispense with the consultation requirements
provided by s.20 of the Landlord & Tenant Act 1985 ('the Act')
under s.20ZA of the Act.

Tribunal Members : Mrs P Dhadli Tribunal Judge
Mr D Satchwell FRICS

Date of Hearing : None. Decision on written submissions.

Date of Decision : **4th February 2015**

DECISION

Introduction

- 1 The Landlords ("the Applicant") have applied to the First-tier Tribunal (Property Chamber) (FTT) for an order to dispense with the consultation requirements in Section 20 of the Landlord & Tenant Act 1985. This section requires a landlord to consult with tenants before placing a contract to undertake any 'qualifying works' that would cost each tenant more than £250 and there are Regulations setting out a timetable and procedure to be followed for consultation.
- 2 However, the Act envisages that there may be occasions where for various reasons a landlord may be unable to consult, for example in cases of emergency, and there is provision in section 20ZA for a landlord to apply to the FTT for 'dispensation' to override the consultation requirements. An application can be made before or after works are carried out.
- 3 In this case, the Applicant has applied for dispensation on the ground that work needs to be carried out urgently given the state of the roof and that the consultation process could take 3 months. The Respondents are the lessees of 1-61 Garrick Close, Hockley Lane, Upper Eastern Green, Coventry.
- 4 The Applicants' agent, Shakespeares, sent written submissions to the Tribunal advising that the roof of the block containing flats 1-10 must be completely replaced because patch repairs are no longer possible. The roof leaks whenever it rains and at least one flat is uninhabitable and the lessee has moved out. The repair needs to be done quickly to minimise the damage to the fabric of the building and to individual flats. The required work is the removal of the existing roof and its replacement with a new roof. The defects were illustrated by photographs, which included damage to flat number 10. The submission included a summary of the estimated costs together with the fees for a surveyor and supervision totalling £29,488.00 plus vat. Added to this amount would be the fees and costs of making the application. The Applicant asserts that this would mean the estimated repairs per flat excluding the cost of the application would amount to £491.46 per flat. This exceeds the amount fixed by section 20 Housing Act 1985 and as such the consultation process would in normal circumstances be warranted. As this process can take 3 months the managing agents have advised the Applicant to seek an order dispensing with the requirement to consult in view of the extreme urgency. The Respondents are all members of the Applicant which is a private company limited by guarantee whose only source of income is the service charge paid by the lessees and a nominal payment of £10.00 ground rent per annum. The Applicant is the owner of the freehold interest in Garrick Close subject to the 60 leases.
- 5 The Applicants have sent letters to the lessees of flats 1-61 on the 16th January 2015 explaining what has to be done and why and the estimated costs. A specimen lease in respect of flat number 22 was sent with the application. The lease is between the original freeholders for a term of 99 years from the 25th March 1982.
6. On the 22nd January 2015 the FTT sent a letter to all the lessees setting out the timetable for compliance as to comments and submissions, which were to be copied to the Applicant's representative. The last date for such comments to be sent was set as the 30th January 2015. The letter also informed them that the matter would be determined on the basis of the papers submitted without an oral hearing. Any party wishing to be heard was to notify the Tribunal in writing by the 30th January 2015 and lodge a written statement of their case with the Tribunal, copied to the Applicant no later than 2nd February 2015.

Facts Found

- 7 The Tribunal inspected the property on the morning of the 4th February 2015. The Tribunal did not access onto the roof but inspected the interior of the second floor flat, Flat 10. The inspection was carried out on a dry but cold day in the presence of Mr Hosie the lessee of flat 10 and Lindsay Hayward, Head of Property Asset Management at Shakespeares. The Tribunal had access to photographs of the roof and the internal damage.
- 8 The property comprises of a two-storey block of flats with brick elevations and felt covered flat roof. The Applicants have stated in the documents provided that this roof has been the subject of numerous patch repairs. The photographs reveal the flat roof surface being submerged in rainwater.
- 9 The Tribunal noted that part of the ceiling within the lounge to flat number 10 had been removed following water ingress and holes had been made in the ceiling to the hallways to allow water to escape. Water staining to the ceiling and the walls to the hall could be observed. There was a dehumidifier that was activated in the lounge. There was no evidence of any further leakage in the flat.
- 10 During the course of the inspection the Tribunal were informed of the following by Lindsay Hayward:
 - a. That there was a report from a surveyor which could be made available to the Tribunal;
 - b. That there were 3 estimates available ranging from £25k to £27k plus vat;
 - c. That the proposed works included the provision of insulation and new facias;
 - d. The contractors could be made available in 2 weeks and the proposed works completed within 6 weeks thereafter, weather permitting;
 - e. Flat number 8 was also affected in the hall [minor damage] on the floor below;
 - f. Funds were available to carry out the works proposed in the sinking fund and other accounts.

The Tribunal requested a copy of the surveyors report and the estimates to be forwarded to them as a matter of urgency.

Relevant Law

- 11 The Applicant provided the Tribunal with the lease of Flat 22, which was said to be a sample of the others, which were all understood to be in similar form. It had been granted for 99 years from 25th March 1982 at a ground rent of £10 per annum.
- 12 The second schedule to the lease sets out the Landlord's obligation for keeping the common parts of the building in good and substantial repair including the roof. The cost of those repairs is then subject to re-imburement by the lessees via a service charge detailed in the seventh schedule in the proportion of 1/60th in respect of such costs.
- 13 The cost of repairing the roof is therefore a service charge item within the ambit of section 18 of the Landlord & Tenant Act 1985 and accordingly, the consultation provisions in s.20 would normally apply to any costs exceeding the £250 threshold.

14 The dispensation provision in section 20ZA of the Act states:

'Where an application is made to a leasehold valuation tribunal (a jurisdiction now transferred to the FTT) 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.' (Our bracket and italics).

15 The detailed consultation requirements are set out in Schedule 4, Part 2 to the *Service Charges (Consultation Requirements) (England) Regulations 2003* ("the Consultation Regulations"). These require the Landlord to serve on the tenants a Notice of Intention, provide a facility for inspection of documents, a duty to have regard to the tenant's observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants and the amount of the estimated expenditure, have to be given in writing to each tenant and to any recognized tenants' association. There is also a duty to have regard to observations in relation to the proposal; to seek estimates from any contractor nominated by or on behalf of the tenants and the landlord must give its response to those observations.

16 Furthermore, there has been case law on the subject in the Supreme Court, *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14, which establishes the matters to be taken into account by a Tribunal when considering an application such as this.

Submissions

17 Applicant

The Applicant set out details of the work required and provided a summary of the estimated costs, which have been referred to above. No formal quotes were enclosed either with the application or in the letter to the lessees. Information was provided at the inspection, which is set out above. Following the inspection estimates were received by the Tribunal, which were greater than that referred to in the application. No decision as to which estimate is to be proceeded with has been made by the Applicant.

In addition the Tribunal received a Roof Survey report, dated 4th February 2015, from Bruton Knowles which sets out various options as to the roof but recommends the replacement of the same as soon as possible.

18 Respondents

The Tribunal wrote to each Respondent at the address provided allowing time for comment in the circumstances of this case, but received no replies.

Decision

19 The Tribunal has reached its decision based on the written submission, the inspection and expert report submitted by the Applicant.

20 The approach for the Tribunal to take when considering an application for dispensation is set out in the Supreme Court's judgment in *Daejan* above. In summary, the approach to be adopted is as follows:

1 The Tribunal should identify the extent to which tenants would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;

- 2 That no distinction should be drawn between 'a serious failing' and 'technical error or minor or excusable oversight' save in relation to the prejudice it causes;
 - 3 The financial consequences to the landlord of not granting a dispensation are not relevant factors when the Tribunal is considering how to exercise its discretion under section 20ZA and
 - 4 The nature of the landlord is not relevant.
- 21 In addition, the Tribunal has power to grant dispensation on such terms and subject to such conditions as it thinks fit, provided any such terms and conditions are appropriate in their nature and effect.
- 22 The Tribunal finds that the proposed works are necessary especially at this time of year to protect the fabric of the building and that the scope of the proposed repair is within the landlord's repairing obligation in the lease.
- 22 Applying the tests above and the principles set out in *Daejan*, the Tribunal finds that the tenants would not be prejudiced by granting dispensation with the consultation requirements in the Landlord & Tenant Act 1985 and that it would be reasonable to grant dispensation on the following conditions:
- a. That the roof survey report and estimates are provided to the lessees within 7 days of the date of this decision;
 - b. That the designated contractor should be instructed forthwith on receipt of this decision;
 - c. That the proposed works should be completed within 6 weeks thereafter and in any event no later than the 31st March 2015.
- 23 The Tribunal emphasises that the purpose of this decision is to consider the application to dispense, not to consider whether the cost is reasonable or reasonably incurred under section 19 of the Act or anything that may prejudice a later application to decide if service charges would be reasonable under section 27A of the Act if an application were made.

Application to the Upper Tribunal

- 24 If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties.

Mrs P Dhadli
Tribunal Judge

Date: 5th February 2015

Schedule

Name	Address
Mrs B M Lee	1 Garrick Close
Mr & Mrs M McCaffrey	2 Garrick Close
Mr K Kilner	3 Garrick Close
Mr & Mrs Chambers	4 Garrick Close
Mrs P M Ballard	5 Garrick Close
Mr B S & Mrs R Goulding	6 Garrick Close
Mrs C M Farrell	7 Garrick Close
Ms M McCotter	8 Garrick Close
Mr M D & Mrs S J Ratcliffe	9 Garrick Close
Mr J J Hoise	10 Garrick Close
Mr R S & Mrs G M Green	11 Garrick Close
Mr S F Conway	12 Garrick Close
Mrs M R Watkins	14 Garrick Close
Mrs C E Connor	15 Garrick Close
Mr M C Rixom	16 Garrick Close
Mr J McAreavey	17 Garrick Close
Mrs R C Marsh	18 Garrick Close
The Executors of the Late Mrs Spicer	19 Garrick Close
Mr P R Chillingsworth	20 Garrick Close
Ms J D Swain	21 Garrick Close
Mrs A M Darby	22 Garrick Close
Mr L Hawker	23 Garrick Close
Ms H Thorley	24 Garrick Close
Mr M R Churm	25 Garrick Close
Mr C D Lawson	26 Garrick Close
Mrs S M Ellis	27 Garrick Close
Mr D Preston	28 Garrick Close
Ms K Foster	29 Garrick Close
Ms S J Scotting	30 Garrick Close
Miss L J Rhodes	31 Garrick Close
Mr M Carnochan	32 Garrick Close
Mr T O Hart	33 Garrick Close
Mr RW & Mrs C A Wise	34 Garrick Close
Mr M & Mrs C Jackson	35 Garrick Close
Mr Maritz	36 Garrick Close
Mr P Owens	37 Garrick Close
Open Doors and Support Ltd	38 Garrick Close
Mrs I D Kyte	39 Garrick Close
Miss D Clarke	40 Garrick Close
Mrs M B Cunningham	41 Garrick Close
Ms K Setchell	42 Garrick Close
Mr P N Rome	43 Garrick Close
Mrs E M P Smith	44 Garrick Close
Mr K Baughan	45 Garrick Close
Mr K M Jones	46 Garrick Close
Mr S M Faulkner	47 Garrick Close
Mr P A Davies	48 Garrick Close
Mr D M & Mrs E Choyce	49 Garrick Close
Mr T O Hart	50 Garrick Close
Miss S Fletcher and Mr S D Springate	51 Garrick Close
Ms J G Blackwell	52 Garrick Close

Ms B Sharples	53 Garrick Close
Mr Carolan	54 Garrick Close
Mr H & Mrs W Bond	55 Garrick Close
Mrs V E Mansell	56 Garrick Close
Mr J & Mrs J Lawless	57 Garrick Close
Miss J Bickerton	58 Garrick Close
Mr J P McGinn	59 Garrick Close
Mr A G Weston	60 Garrick Close
Mr M Hayhoe	61 Garrick Close