



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

**Case Reference** : **BIR/00CN/LDC/2019/0004**

**Property** : **Hunton Court Gravelly Hill North  
Erdington Birmingham B23 6BT**

**Applicant** : **The Trustees of the Susannah Carter  
Millennium Trust**

**Representative** : **Proxim Property Management Ltd**

**Respondents** : **The long leaseholders of Hunton Court**

**Type of Application** : **An Application under Section 20ZA of the  
Landlord and Tenant Act 1985 for  
dispensation of the Section 20 consultation  
requirements.**

**Tribunal Members** : **Vernon Ward BSc (Hons) FRICS  
Judge David R Salter**

**Date of Decision** : **3 July 2019**

---

**DECISION**

---

## **BACKGROUND**

1. The Application, received on 14 June 2019, requests the Tribunal to grant a dispensation from the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) in respect of repairs required to Hunton Court, Gravelly Hill North, Erdington Birmingham B23 6BT.
2. The application form states that the Applicant, the Trustees of the Susannah Carter Millennium Trust, is the landlord of the subject property, whilst the Respondents are the lessees/leaseholders of the 15 apartments contained therein.
3. The works in question are the repair of the roof to the development. The Applicant advises that leaks have been reported into several apartments and also into the electrical systems relating thereto.
4. The Tribunal was advised that the matter was urgent and accordingly fast tracked the application.
5. Under the provisions of the 1985 Act and the 2003 Regulations, the Applicant is required to consult if the cost of the works is in excess of £250 including VAT per leaseholder.
6. The Applicant claims that dispensation is necessary as the works are urgently required and further it is not possible to carry out a lasting temporary repair whilst formal consultation procedures are carried out. The cost of a new roof is estimated at £70,000 and there are approximately £33,000 in reserve. The Landlord will loan the balance to the service charge account. The works proposed will therefore be qualifying works within the meaning of section 20ZA (2) of the 1985 Act.
7. Following Directions of the Tribunal, copies of the application form and ancillary information were forwarded to all leaseholders.
8. The Tribunal received no representations from any lessee/leaseholder.

## **THE LEASE**

9. Relevant provisions within the lease, dated 28 February 1986, submitted to the Tribunal on behalf of the Applicant are as follows

Paragraph 2 of the Second Schedule - Covenants by the Lessee states:

*“(2) To pay in addition to the rent hereby reserved and covenanted to be paid and by way of further or additional rent the expenses incurred by the Lessor under paragraphs 1 to 12 of the Third Schedule in such sum or sums and in the proportions specified in the Fourth Schedule hereto.”*

The Fourth Schedule states:

*“” Any expenses incurred by the Lessor under Paragraph 1 to 12 of the Third Schedule hereto shall be paid in the proportions of one Fifteenth by each Lessee except where the Lessor shall direct that any expenditure shall be divided in different proportions.....”*

The Third Schedule at Paragraph 4 states the following:

*“”4. To repair and keep in good repair and condition the Building and each and every part thereof and the garages (other than such part of the Building or garages as are the responsibility of individual Lessees) including the roof thereover and the means of support thereof the Service Media the foundations thereof the brickwork thereof and other the support for the Building and garages and any communal television reception apparatus”*

## **THE INSPECTION**

10. The Tribunal carried out an inspection of the subject property accompanied by Mr Bill Drake-Lee of Proxim Property Management, the Applicant’s representative and the recently appointed managing agents.
11. Hunton Court, which is of brick construction surmounted by a flat roofing system, comprises a single structure incorporating 15 apartments arranged over ground, first and second floors. There are two communal entrance halls, one serving apartments 1 to 9 and the other serving the remainder, 10 to 16.
12. The Tribunal inspected the top floor communal areas of each stairwell and noted evidence of water ingress. The Tribunal also inspected apartment 9, by the courtesy of Mr R Bolger whose parents are the leaseholders, and apartment 16, by the courtesy of the leaseholders, Mr E and Mrs C Coffey. In both apartments, evidence of extensive water ingress was noted. The issues created by the water ingress had been exacerbated by the fact that water had run into the electrical installations of the apartments inspected.
13. The apartments inspected were at either end of the development and this coupled with the evidence of the ingress into the communal areas would indicate that the entire roof requires attention not just a portion of the same.

14. The Applicant in their submissions stated that they had carried out some emergency repairs to the roof but these were not expected to last and a permanent repair was urgently required. The Tribunal was advised that a surveyor had been appointed to oversee the project. Initially, a core sample of the roof would be taken to assess the extent of the repair required and accordingly produce a specification. The specification would then be used to invite tenders.

## **THE LAW**

15. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.
16. There are essentially three stages in the consultation procedure, the pre tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and in some cases a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.
17. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

## **THE TRIBUNAL’S DETERMINATION**

18. The provisions cited from the lease enable the cost of the works to be recovered from the lessees/leaseholders by way of the service charge.
19. It is clear to the Tribunal from the information supplied by the Applicant and the evidence gleaned from the inspection that extensive works are urgently required to the roof of the property.
20. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. However, following the Supreme Court’s judgment in *Daejan Investments Limited v Benson et al* [2013] UKSC 14, the Tribunal in considering whether dispensation should be granted in this matter should take

into account the extent to which lessees/leaseholders were prejudiced by the landlord's failure to consult.

21. In these circumstances, the delay caused by following the consultation procedures, at least two months, could exacerbate the situation. It is conceivable that if there were to be another period of heavy rain as occurred in early June, that some occupiers may have to move out of their apartments or at the very least more damage could be caused internally.
22. The Tribunal has been informed that the Applicant has appointed a surveyor to produce a specification and seek tenders for the repairs hence the Tribunal cannot see that the lessees/leaseholders will be prejudiced by the consultation procedures not being followed. In addition, no lessee/leaseholder has made representations of any kind to the Tribunal.
23. The Tribunal is satisfied that the works are required and that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act. Accordingly, dispensation is duly granted.
24. Parties should note that this determination does not prevent any later challenge by any of the respondent leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.
25. In making its Determination, the Tribunal has had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

## **APPEAL**

26. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

## **V WARD**