



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

**Case reference** : **CAM/00KA/LDC/2019/0026**

**Property** : **23 Grove Road, Luton,  
Bedfordshire LU1 1QJ**

**Applicant** : **Greentree Estates Limited**

**Representative** : **Ms Jade Hammond of Warwick  
Estates Property Management  
Limited**

**Respondents** : **Craig Christopher Cameron  
Alison Grace Anderson  
Network Property Limited**

**Type of application** : **To dispense with the requirement  
to consult leaseholders**

**Tribunal Members** : **Judge N Hawkes  
Mrs E Flint FRICS**

**Date and venue of  
hearing** : **5 November 2019 at Luton  
Magistrates Court**

**Date of decision** : **8 November 2019**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of this application on terms that:

(1) none of the applicant landlord's cost incurred in connection with this application shall be charged to the lessees; and

(2) the applicant landlord shall pay the respondent lessees' reasonable costs of this application, summarily assessed in the sum of £450 inclusive of VAT, within 21 days of the date of this decision.

## **Background**

1. The applicant has applied to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the statutory consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to 23 Grove Road, Luton Bedfordshire LU1 1QJ ("the Property").
2. The Tribunal has been informed that the Property comprises a house, built in about 1915, which has been converted into two flats.
3. The application is dated 10 September 2019 and the respondent lessees are listed in a schedule to the application.
4. Directions of the Tribunal were issued on 11 September 2019 and an oral hearing of the application took place at the Luton Magistrates Court on 5 November 2019.
5. On behalf of the applicant, the hearing was attended by Ms Jade Hammond and Ms Louise Burns of Warwick Estates Property Management Limited "Warwick Estates", the applicant's managing agents.
6. On behalf of the respondents, the hearing was attended by Ms Nicola Huntingford and Ms Mina Anacreonte of Network Properties Limited and by Mr Craig Cameron.
7. The start of the hearing was put back until shortly after 12 noon in order to allow Mr Cameron, who had childcare difficulties, additional time in which to arrive.

8. At the start of the hearing, the Tribunal provided all parties with a copy of Woodfall: Landlord and Tenant, paragraph 7.199.8 "*Powers of Tribunal to dispense with consultation requirements*".
9. This extract from Woodfall had been considered by the Tribunal and it includes a summary of the decision of the Supreme Court in *Daejan Investments v Benson and Others [2013] UKSC 14*.
10. The parties were given an hour over the lunch adjournment to consider the extract from Woodfall. The Tribunal then invited submissions from all parties, in particular on the issue of whether or not the respondents have been prejudiced by the applicant's failure to comply with the statutory consultation requirements.
11. The Tribunal also adjourned during the course of the hearing in order to enable Ms Hammond to attempt to obtain instructions from the applicant landlord and in order to enable the respondents to attempt to obtain further detail of their solicitors' costs.
12. Colour photographs of the Property were provided in the hearing bundle and the Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute. None of the parties asked the Tribunal to carry out an inspection.

### **The applicant's case**

13. At page 8 of the application, the applicant's managing agent states:

*"I was notified following a health and safety visit of a huge risk whereby a footpath had a large drop down to where the basement flat sits on 24.5.19, requested quote from contractor received this on 28.5.19 work order issued to complete works as we did not have time to consult based on this level of risk."*

14. The Tribunal has been provided with a copy of a report dated 24 May 2019, which is relied upon by the applicant, in which it is stated:

*"The walkway leading to the front door is open with no barrier and there are 3 or more steps leading to the front door but no handrail to assist with walking up and down, so slips, trips and falls could occur. Instruct contractor to fit handrails/barrier for the walkway and steps to the front of the property. The front wall is low and requires a barrier to be installed to stop the risk of falls."*

15. Ms Hammond informed the Tribunal that she has been managing the Property on behalf of Warwick Estates for just under a year. However, Warwick Estates did not carry out any inspection of the Property when it took over the management responsibilities and Ms Hammond first

became aware of the hazard and the need for urgent remedial work on 24 May 2019.

16. On becoming aware of the hazard, Ms Hammond took steps to carry out the necessary remedial work as a matter of urgency and she states that there was insufficient time in which to carry out a statutory consultation.

### **The respondents' case**

17. The respondents state that, on 16 July 2014, the landlord's former managing agents gave notice of their intention to carry out qualifying works to the Property.
18. At this time, the respondents were provided with a Schedule of Work, item number 2.02 of which reads as follows:  
  
*"Erect railing to side of steps and front wall to meet current building regulations."*
19. A copy of the relevant page of the Schedule of Work has been provided by the respondents.
20. The respondents state that the need to carry out the work which forms the subject matter of this application cannot have come as any surprise to the applicant landlord in 2019 because, as long ago as 2014, the landlord was aware that this work was needed.
21. They submit that the landlord had ample time in which to carry out a statutory consultation in the period of over five years between the service of the Schedule of Work and the carrying out of the work which is described at item number 2.02 of this Schedule.
22. The respondents state that responding to this application for dispensation has been stressful and inconvenient. They instructed a solicitor to advise them in respect of this application at the rate of £250+VAT per hour but have not yet received the final bill.
23. The respondents also raised concerns regarding the standard and cost of the work which has been carried out and regarding the standard of the service which has been provided by the landlord's managing agents.
24. These are matters which the respondents intend to raise in an application under section 27A of the 1985 Act, adducing the necessary evidence in support, and they are not matters which are currently before this Tribunal.

## **The Tribunal's determination**

25. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.
26. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
27. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
28. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
29. The Tribunal accepts the respondents' evidence that the landlord's former managing agents notified them of the need to carry out the work which forms the subject matter of this application as long ago as July 2014.
30. Ms Hammond stated that she was unable to explain why no statutory consultation has been undertaken by the landlord within the last five years notwithstanding that (i) it would have been clear on simply carrying out a visual inspection of the Property that the installation of railings was required; and (ii) the five year period of inaction would have been more than ample time in which to carry out a statutory consultation (which typically takes approximately three months).
31. The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable in all the circumstances to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of this application on terms that:
  - (1) none of the applicant landlord's cost incurred in connection with this application shall be charged to the lessees; and
  - (2) the applicant landlord shall pay the respondent lessees' reasonable costs of this application, summarily assessed in the sum of £450 inclusive of VAT, within 21 days of the date of the determination.
32. The Tribunal makes an order in these terms because, if the statutory consultation had been carried out, the applicant landlord would not have incurred any costs in connection with this application and neither

would the respondent lessees. Ms Hammond was unable to put forward any argument as to why the Tribunal should not make an order in these terms.

33. In assessing the respondent lessees' reasonable costs in the sum of £450 including VAT, the Tribunal has had to do its best on the basis of the limited evidence which is available.
34. The hourly rate of the respondents' solicitor was not challenged. The respondents were unable to state how long their solicitor has spent working on this application. They indicated that he has done a lot of work for them and his file is now extensive.
35. However, the respondents very properly pointed out that the work carried out by their solicitor includes work undertaken in connection with their proposed section 27A application as well as the work undertaken in advising them in respect of this application for dispensation. They were unable to contact their solicitor to ascertain how he would apportion the legal costs.
36. It was apparent to the Tribunal during the hearing that the respondents' representatives, understandably, do not find the relevant statutory provisions and case law easy to understand. In addition to considering the documents, their solicitor would have had to have spent time seeking to explain the law to the respondents' representatives.
37. In all the circumstances, the Tribunal finds that it is likely on the balance of probabilities that approximately an hour and a half of the time spent by the respondents' solicitor in connection with matters relating to the Property is referable to advising the respondents' representatives in respect of this application. An hour and a half of their solicitor's time would cost the respondents the sum of £450, inclusive of VAT.
38. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge Hawkes

Date 8 November 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).