



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CAM/22UJ/LDC/2022/0017

HMCTS code
(paper, video, audio) : P:PAPERREMOTE

Property : 27-32 The Fortunes, Harlow, Essex
CM18 6PQ
42-47 The Fortunes, Harlow, Essex
CM18 6PQ
65-70 The Fortunes, Harlow, Essex
CM18 6PH
140-145 The Fortunes, Harlow,
Essex CM18 6PJ
204-249 Hookfield, Harlow, Essex
CM18 6QP

Applicant : Harlow Council

Representative : Vicky Summers

Respondents : All leaseholders of dwellings at the
property (including any of their sub-
tenants of any such dwelling) who
are liable to contribute to the cost of
the relevant works

Type of application : For dispensation from consultation
requirements - Section 20ZA of the
Landlord and Tenant Act 1985

Tribunal members : Mary Hardman FRICS IRRV(Hons)

Date of decision : 9 August 2022

DECISION

Description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in an unpaginated bundle from the Applicant. I have noted the contents and my decision is below.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in respect of qualifying works to reinstate the roofs to each of the blocks following refurbishment of the water tanks.

Reasons for the tribunal's decision

The application

- (1) The application seeks dispensation with the statutory consultation requirements in respect of qualifying works to reinstate the roofs to each of the blocks following refurbishment of the water tanks.
- (2) The applicant says the work is urgent because the contractor is already on site and scaffolding has been erected around the blocks which they say needs to be utilised.
- (3) The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the "1985 Act") and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
- (4) In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
- (5) The only issue here for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements
- (6) This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable or by whom they are payable.

The Property and parties

- (7) The applicant says the property consists of purpose-built blocks of 6 flats built in 1959 comprising a mixture of studio, one and two bedroomed flats.
- (8) The application is made by Harlow Council. The application was made against the leaseholders of the relevant flats (the "Respondents")

Procedural history

- (9) The Applicant says that the works are urgent, as explained below.
- (10) Initial case management directions were given on 14 June 2022. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond 15 July 2022.
- (11) The directions further provided that this matter would be determined on or after 8 August 2022 based on the documents, without a hearing, unless any party requested an oral hearing
- (12) No responses were received from leaseholders and a hearing was not requested.
- (13) On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant's case

- (14) Documentation provided by the Applicant states that following refurbishment to the water tanks a detailed site inspection revealed that the original scheduled removal of a portion of the roof covering, alterations to the roof frames and replacement of the existing tiles was not viable.
- (15) Instead, a partial replacement of the 'area to the water tanks' was required. An alternative method of accessing the water tanks had been considered but was not considered viable due to the roof framing, the tanks being asbestos and therefore could not be cut up and extracted in sections, and there was a lack of headroom and area in the roof space
- (16) Repairs are said to be urgent as the contractor is already on site and scaffolding has been erected around the blocks which they say needs to be utilised.

- (17) The council had written to leaseholders on 12 April 2022 to inform them of the works required and that they had made an application to the tribunal for dispensation.
- (18) On 16 June 2022 they wrote again to leaseholders with further details.
- (19) They said that there was evidence of deterioration of the existing roof tiles, that they had lost their square edge, tight butt joints and the surface was pitted with moss and typical erosion. There was a foreseeable risk of very few tiles surviving the removal and setting aside process and therefore replacement tiles were required for the works to proceed.
- (20) The roof tiles to the estate were discontinued by the original manufacturer so it was proposed to use the closest alternative.
- (21) The estimated cost of carrying out these works was £6,431.14 per block, which was a £5,841.14 per block increase on the original tender price.

The Respondents' position

- (22) As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
- (23) The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed

Determination

- (24) Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
- (25) This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
- (26) The tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to works required to reinstate the roofs to each of the blocks following refurbishment of the water tanks.

- (27) It therefore determines under section 20ZA of the 1985 Act to dispense with all relevant consultation requirements in relation to these works.
- (28) This is not an application for the tribunal to approve the reasonableness of the works or the reasonableness, apportionment or payability of the service charge demand.
- (29) I make no finding in that regard and the leaseholders will continue to be able to make an application under section 27A of the Act in respect of the reasonableness of the works and/or the reasonableness, apportionment or payability of the service charge demand for them.
- (30) There was no application to the tribunal for an order under section 20C of the 1985 Act.
- (31) The Applicant shall be responsible for serving a copy of this decision on all leaseholders.

Mary Hardman FRICS IRRV(Hons)
9 August 2022

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).