



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

Case Reference : BIR/00CN/LDC/2020/0006

HMCTS : P:PAPERREMOTE

Property : Flats 1-12, Grosvenor House, 57 Sutton Road, Erdington,
Birmingham B23 6QJ

Applicant : Beron Estates Limited

Representative : Robert Oulsnam and Company Limited

Respondents : The Lessees of Flats 1-12, Grosvenor House:

Flat 1: Mr & Mrs M Harnett
Flat 2: Mrs D McCarthy
Flat 3: Mr A Pikajaago
Flat 4: Miss K Roche
Flat 5: Mrs J Daly
Flat 6: Mrs M Reilly
Flat 7: Miss C Reid
Flat 8: Mr A Farquhar
Flat 9: Arden Property Co.
Flat 10: Miss C Daly
Flat 11: Mr R Balem
Flat 12: Ms G Aldous

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

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

Date of Decision : 18 September 2020

DECISION

Introduction

- 1 The Landlord (“the Applicant”) applied to the First-tier Tribunal (Property Chamber) (FTT) in an application dated 8 July 2020 and received by the Tribunal on 13 July 2020 for an order to dispense with certain consultation requirements provided for by section 20 of the Landlord & Tenant Act 1985 (“the Act”), as amended by the Commonhold and Leasehold Reform Act 2002. In short, this section together with the Service Charges (Consultation Requirements) (England) Regulations 2003 (‘the Regulations’) requires a landlord to consult with lessees before placing a contract to undertake any 'qualifying works' that would cost each tenant more than £250.00. The Regulations set out a timetable for the consultation and identify the procedures to be followed in the course of the 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 of the Act for a landlord to apply to the Tribunal for 'dispensation' to override all or some of the consultation requirements. An application may be made before or after works are carried out.
- 3 In this case, the Applicant applied for dispensation from ‘the full consultation process’ in respect of acknowledged ‘qualifying works’ on the ground that the work, namely recovering of the flat roof of Grosvenor House (one of two purpose built blocks of flats) with new felt, was required, urgently, because, as stated in the application, ‘[the] roof is leaking when it rains and water is dripping through the ceiling and down the bedroom walls of flat 10 on the top floor. Rainwater is being collected in buckets in the bedroom. The ceiling is beginning to bulge and the occupier is unable to sleep in there at this time. We consider this to be particularly urgent to avoid more damage to the property...’. The application named the above-named lessees of Grosvenor House as the Respondents.
- 4 By Directions dated 20 July 2020, the Applicant was instructed to send to the Tribunal and to each of the Respondent lessees, *inter alia*, a statement explaining the purpose of the application and the reason why dispensation was sought, copies of any specialist reports obtained in respect of the proposed works together with any quotes received and any other appropriate material and details of the consultation procedure carried out, if any. The Directions also afforded each of the Respondents the opportunity to submit a statement to the Tribunal, with a copy to the Applicant, concerning the application and stating, clearly, any objections to or support for the application and the reasons or grounds relating thereto.
- 5 The Directions also indicated that under normal circumstances the Tribunal would carry out an inspection of Grosvenor House before making its determination in respect of this application. However, in view of the current Covid-19 Public Health Emergency, the Tribunal proposed to determine the application without such an inspection, unless any party objected, with full reasons, by 14 August 2020. Accordingly, the parties were directed to ensure that there was sufficient photographic evidence for the Tribunal to appreciate the works proposed.
- 6 None of the parties to the application objected to the application being determined without an inspection.
- 7 Further, the Directions recorded that the Applicant had signified that it was content with a paper determination. In this respect, any Respondent who required an oral hearing was invited to so advise the Tribunal by 14 August 2020. No such request for an oral hearing was received by the Tribunal.

- 8 In furtherance of the application and in accordance with the Directions, Robert Oulsnam and Company Limited ('Oulsnams') submitted, on behalf of the Applicant, a statement dated 23 July 2020 explaining the purpose of the application and the reason for seeking a dispensation, copies of various letters which it had written to each of the Respondents relating to the 'emergency roof repairs' leading to the filing of the application with the Tribunal, two written quotations for the work to be undertaken, and a photograph of the ceiling of Flat 10 providing evidence of water ingress into that flat.
- 9 The Tribunal did not receive submissions from any of the Respondents.
- 10 In light of the above, the Tribunal determines the application on the basis of the written evidence submitted by the Applicant, without an inspection of Grosvenor House, and through the medium of remote video conferencing.

The Leases

- 11 The Applicant provided the Tribunal with a copy of a lease dated 15 December 1961 which was said to be a sample of the original lease of flats at Grosvenor House all of which were understood to be in similar form. It had been granted for a term of 99 years from 29 September 1961 at a ground rent of £15.00 per annum for the entire term.
- 12 In that lease, there is an obligation on the part of the lessor to provide the services set out in the First Schedule which include 'the maintenance repairing renewing repainting and cleaning of...(A) The roofs gutters pipes and other things for conveying rain from Grosvenor House...'. In clause 3 of the lease, the lessor covenants with the lessee to observe and perform the provisions and stipulations in the Third Schedule. These include an obligation on the lessor's part to 'keep the roofs external parts and main structure of Grosvenor House...in good tenantable repair and condition...'. In turn, the lessee agrees to pay 'a further or additional rent' comprising a proportion of the 'total cost and expenses' incurred by the lessor in respect of the services referred to in the First Schedule.
- 13 The Applicant also provided the Tribunal with a copy of a surrender and lease dated 17 November 2008 by virtue of which the initial lease was surrendered in return for the grant of a 'new' lease for a term of 110 years from 25 March 2002 to 24 March 2112. This was also stated to be a sample of the surrender and lease applicable to the flats at Grosvenor House all of which were understood to be in similar form.

Broadly, the 'new' lease' was entered into on the same terms and subject to the same covenants, provisos and conditions found in the initial lease. Hence the lessor's aforesaid 'repairing' obligation is retained together with the lessee's obligation to contribute towards costs incurred by the lessor in meeting that obligation. However, the lessee's contribution as 'additional rent' to such costs is redefined, as follows, in clause (3)(B) of the 'new lease':

'(B) One twelfth of the expense of maintaining repairing (and where and when necessary cleaning and/or decorating) renewing and where necessary replacing:-

- (a) the main structure of Grosvenor House (and in that respect it is hereby agreed and declared that the term "main structure" shall in this Lease include...the roof(s) gutters and drain water pipes of Grosvenor House...'

- 14 It is apparent from these leases that the cost of recovering the flat roof of Grosvenor House with new felt falls within the Applicant's repairing obligation and, further, the contribution by each of the Respondents to this cost, even though designated as

‘additional rent’, may be regarded as a service charge item for the purposes of section 18 of the Act. Accordingly, the consultation provisions in section 20 of the Act and the Regulations would normally apply to any costs exceeding the £250.00 threshold.

Relevant Law

- 15 As intimated above (see above, paragraph 1), section 20 of the Act, as amended, and the Regulations provide for the consultation procedures that landlords must normally follow in respect of ‘qualifying works’ (defined in section 20ZA(2) of the Act as ‘work to a building or any other premises’) where such ‘qualifying works’ result in a service charge contribution by an individual lessee in excess of £250.00.
- 16 Provision for dispensation in respect of some or all such consultation requirements is made in section 20ZA(1) of the Act which states:
- ‘Where an application is made to a leasehold valuation tribunal (a jurisdiction transferred to the First-tier 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.’ (*emphasis added*)
- 17 In *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14 (*Daejan*), the Supreme Court set out the proper approach to be taken to an application for dispensation under section 20ZA of the Act. In summary, this approach is as follows:
- a. The Tribunal should identify the extent to which lessees 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 consultation requirements;
 - b. That no distinction should be drawn between ‘a serious failing’ and ‘technical error or minor or excusable oversight’ on the landlord’s part save in relation to the prejudice it causes;
 - c. The financial consequences to the landlord of not granting a dispensation are not relevant factors when the Tribunal is considering how to exercise its jurisdiction under section 20ZA; and
 - d. The nature of the landlord is not relevant.
- 18 Further, in exercise of its power to grant a dispensation under section 20ZA of the Act, the Tribunal may impose such terms and conditions as it thinks fit, provided only that these terms and conditions must be appropriate in their nature and effect.
- 19 For the sake of completeness, it may be added that the Tribunal’s dispensatory power under section 20ZA of the Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

Submissions of the Parties

Applicant

- 20 The essence of the Applicant’s case is to be found in the Application and in the statement prepared by Oulsnam on the Applicant’s behalf and follows.

- 21 Oulsnam's was appointed, recently, as managing agents of Grosvenor House. Soon after its appointment, it discovered that a lessee of one of the top floor flats (Flat 10) was experiencing water ingress into her flat; rainwater was leaking from the roof through the ceiling, down two walls and into her bedroom. The ceiling of the bedroom is beginning to bulge and the lessee is obliged to collect water in buckets. The lessee is unable to sleep in the bedroom.
- 22 As an initial response, Oulsnam's sought the advice of two roofing contractors. Each of these contractors advised Oulsnam's that the roof was in poor condition and could not be patch repaired. They suggested that the roof needed a new felt covering.
- 23 Following a consultation with the Applicant about the required roof repair, Oulsnam's wrote to each of the lessees on 24 June 2020 explaining the nature of the problem and the need for the roof to be recovered with new felt. In that letter, Oulsnam's also indicated that, in its opinion, this was an emergency repair and there was a need to act quickly and this would obviate a full consultation with the lessees. Oulsnam's added that there was no reserve fund to pay for this work. The consequent likely cost to each lessee through the service charge was made evident by reference to a written quotation that had been received from Roofserv and by a service charge invoice that accompanied the letter. Finally, Oulsnam's stated that, in instances where a lessee may find it difficult to pay the amount due, the Applicant may agree to lend the necessary money 'with a payment plan in place over a period of 12 months (under certain terms and conditions)'.
- 24 Thereafter, a meeting was convened at Grosvenor House on 2 July 2020 which was well attended with eight lessees present. At the meeting, Oulsnam's explained the requirements of a section 20 consultation and indicated that it was hoped, in view of the urgent nature of the leak and the effect that it was having on the lessee's occupation of Flat 10, that there might be dispensation in respect of the 30 day notice periods in Stages 1 and 2 of the section 20 procedures and that an application would be made to the Tribunal. Further, it was agreed that Oulsnam's would collect at least two quotes for the work. The Respondents were invited to nominate a contractor from whom a quotation might be sought.

These matters were reiterated by Oulsnam's in a letter to the Respondents dated 9 July 2020 with confirmation that an application for dispensation had been made to the Tribunal.

In the application, the Applicant sought dispensation from the 30 day notice periods in Stages 1 and 2 of the section 20 consultation procedure by reducing that notice period in each instance to 10 days. Such dispensation was sought with a view to minimising the water damage to Flat 10.

- 25 In the event, the following two written quotations were obtained for the recovering of the flat roof of the block within which Flat 10 is situated with new felt.

Roofserv	£10,080.00 (including VAT)
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Sutton Roofing Ltd	£9,600.00 (including VAT)
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A third verbal quotation was disregarded by Oulsnam's. The Respondents did not nominate a contractor from which a quotation might be obtained.

- 26 In a letter to the Respondents dated 20 July 2020, Oulsnam's drew the Respondents' attention to the quotations and recommended that the contract for the work be awarded to Roofserv. Whilst acknowledging that Roofserv's quotation was not the cheapest,

Oulsnams indicated that Roofserv had carried out high quality roofing work on other properties that it managed and had proven to be trustworthy. Roofserv also offered a 15 year guarantee. Oulsnams had not had any previous dealings with Sutton Roofing Ltd.

- 27 In a subsequent letter dated 23 July 2020, Oulsnams wrote at the behest of the Tribunal to the Respondents giving the Respondents the opportunity to object to or state their support for the shortened consultation process sought in the application by 14 August 2020.

Respondents

- 28 No evidence was submitted to the Tribunal by any of the Respondents (see above, paragraph 9).

The Tribunal's Determination

- 29 The Tribunal reaches its decision on the evidence adduced by the Applicant, the relevant law and its knowledge and experience as an expert Tribunal. It noted that none of the Respondents had objected to the dispensation sought in the application.
- 30 It is clear to the Tribunal from the information supplied by the Applicant that works are urgently required to the roof of Grosvenor House.
- 31 Section 20ZA does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. However, as seen above (see, paragraph 17) the Supreme Court in *Daejan* has indicated that the Tribunal in considering whether dispensation should be granted must take into account the extent to which lessees would be prejudiced by a landlord's failure to consult.
- 32 In this case, it appears that amongst the professional roofing contractors to whom reference is made in the evidence there is agreement that the work to be undertaken on the roof involves recovering with new felt and the quotations provided by Roofserv and Sutton Roofing Ltd reflect this. Oulsnams made the Respondents aware at the above-mentioned site meeting and in writing of the need for this work, of the urgency required in carrying it out and the related application for dispensation in respect of the specified usual consultation requirements. The Respondents are also aware of the quotations.
- 33 Essentially, there are three stages in the consultation procedure – Stage 1 the pre-tender stage; Notice of Intention, Stage 2 the tender stage; Notification of Proposals, including estimates, and, in some cases, a Stage 3 advising the lessees that the contract has been placed and the reasons behind the same. The dispensation sought in the application is for a reduction in the usual 30-day day notice periods in relation to Stages 1 and 2 of the procedure to 10 days for each stage. If granted, this provides, in effect, a means for expediting the carrying out of this work in order to curtail damage or further damage to Flat 10.
- 34 In these circumstances and applying the tests set out in section 20ZA and the approach specified in *Daejan*, the Tribunal finds that the lessees would not be prejudiced by granting the dispensation of the section 20 consultation requirements in the Act and in the Regulations to the extent sought in the application and that it would be reasonable to grant such dispensation. Therefore, dispensation is granted.
- 35 Parties should note that this determination relates only to the dispensation sought in the application and does not prevent any later challenge by any of the lessees under sections 19 and 27A of the Act on the grounds that the costs of the works incurred had not been reasonably incurred or that the works had not been carried to a reasonable standard.

Judge David R. Salter

Date: 18th September 2020

Appeal to the Upper Tribunal

- 36 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
- 37 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 38 The application for permission to appeal must identify the decision to which it relates, state the grounds of appeal and state the result the party making the application is seeking.