



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

Case Reference : BIR/41UD/LDC/2020/0009

HMCTS : P:PAPERREMOTE

Property : Willowfields, Maxtock Avenue, Lichfield, Staffordshire WS13 6PE

Applicant : Willowfields Management Company Limited

Representative : Youssef Aktaou of SDL Property Management

Respondents : The Lessees of No. 1, 3, 5, 7, 9 Maxtock Avenue, Lichfield WS13 6PE & 20 Sainte Foy Avenue Lichfield WS13 6PA

Representative : None

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 : Nicholas Wint FRICS (Chair)
Vernon Ward BSc (Hons) FRICS

Date of Decision : 24 November 2020

DECISION

Introduction

- 1 The Landlord (“the Applicant”) applied to the First-tier Tribunal (Property Chamber) (FTT) in an application dated 20 July 2020 and received by the Tribunal on 12 August 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 grounds that:

‘The roof of the property imposed a serious health and safety hazard when hip tiles got broken and required urgent replacement, some of the roof tiles and section of the gutter were also required to be replaced. Due to the emergency of these works the Property Manager instructed a roofing company to repair urgently, any further delays of these works may have jeopardised residents and general public safety and may have also caused serious injuries or even fatalities, please see pictures attached’.
- 4 By way of Directions dated 28 August 2020, the Applicant was instructed to send, by 15 September 2020, to the Tribunal and to each of the Respondent lessees the following:
 - a) a copy of the application form, accompanying documents and items provided to the Tribunal by way of the email dated 24 August 2020 (excluding the lease and list of Respondents)
 - b) a statement explaining the purpose of the application and the reason why dispensation is sought
 - c) copies of any specialist reports obtained in respect of the proposed works together with any quotes received and any other appropriate material
 - d) details of the consultation procedure carried out, if any
- 5 The Directions also instructed that by 29 September each of the Respondents are to submit a statement to the Tribunal, with a copy to the Applicant, in connection with the application clearly stating any objections or support for the application and the reasons or grounds relating thereto.
- 6 The Directions also indicated that under normal circumstances the Tribunal would carry out an inspection of the subject Property 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 but requested the parties to provide sufficient photographic evidence to enable the Tribunal to understand the works proposed.
- 7 The Applicant advised the Tribunal that a paper determination was acceptable and, in the circumstances, neither party objected to the application being determined without an inspection or requested a subsequent oral hearing.

- 8 The Applicants Representative provided two statements. The first dated 24 August 2020 and the second dated 9 September 2020 both explaining the purpose of the application, the reason for seeking a dispensation and an enclosed works order dated 24 May 2019 and various photographs of the works carried out. Also enclosed was a quote from Beacon Building Development Limited dated 23 May 2019 costing the works at £4,140 plus VAT together with an invoice dated 5 June 2019 for that same amount.
- 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 the subject Property.

The Lease

- 11 The Applicant provided the Tribunal with a copy of a lease dated 24 August 2001 in respect of Ground Floor Apartment No. 7, 20 Sainte Foy Avenue, Chesterfield Road, Lichfield Staffs.
- 12 It is understood and accepted by the Tribunal that this lease is identical to the other Respondents leases.
- 13 It is held for a term of 99 years from 1 January 2001 at an initial ground rent of £100.00 per annum and subject to fixed reviews at specific intervals.
- 12 Schedule 5 of the lease provides for the Maintenance Expenses and more specifically:

‘Repairing, rebuilding, repointing or otherwise treating as necessary and keeping those parts of the Building which are comprised in the Maintained Property and every part of them in good and substantial repair order and condition and renewing and replacing all worn or damaged parts’.
- 13 The Maintained Property is described as being:

‘...those parts of the Development which are more particularly described in the First Schedule and the maintenance of which is the responsibility of the Management Company’.
- 14 Schedule 1 of the lease describes the Maintained Property as being:

‘...the whole of the Development so far as not comprised in the Apartments excluding the New Road and including ... the structural parts of the Buildings and the external parts of the Buildings including the roofs, the foundations, the load bearing walls, the walls which bound each of the Apartments (even if not load bearing) and the ceilings and floors above and below each of the Apartments’.
- 15 The Development is described as:

‘...the land now or formerly comprised in title numbers SF270040 and SF405044 and known for the development as ‘Willowfields’.
- 16 Schedule 6 of the lease provides that the lessee shall:

‘...pay the Lessees Proportion of the Maintenance Expenses...’.
- 17 The Maintenance Expenses are described in the lease as:

‘...the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the Term in carrying out the obligations specified in the 5th Schedule’.

- 18 The lessee’s proportion of the Maintenance Expenses is 15.33%.
- 19 Accordingly, the Tribunal finds that the lease provides that the cost of repairing and maintaining the roof falls within the Applicants repairing obligation and that each Respondent is responsible for the cost, as a relevant cost, which is to be paid through the service charge.
- 20 The consultation provisions in section 20 of the Act and the Regulations would, therefore, normally apply as the total cost of the repairs exceeds the £250.00 threshold per leaseholder.

Relevant Law

- 21 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.

- 22 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*).

- 23 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.

- 24 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.

25 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

26 The Applicant's case is set out in the Application and in their statement(s) prepared by their Representative, Mr Y Aktaou of SDL Property Management.

27 Mr Aktaou advises that the roof of the building has two runs of hip tiles and roof tiles that were broken and required urgent attention as they posed a risk to pedestrians who use the pavement below on a daily basis. As a consequence, they considered there was insufficient time to undertake the normal consultation exercise and nor was their time to seek a number of alternative quotes.

28 A quote was however sought from Beacon Building Development who advised in their letter dated 23 May 2019 that the following works were required at a cost of £4,140 plus VAT:

- Erect access scaffolding to both elevations above the main entrance
- Remove the remainder of the 2No. runs of hip tiles and dispose of
- Replace any missing roof tiles
- Fix timber support battens for dry ridge fixing
- Provide & install fully fixed dry hip system
- Replace section of Damaged gutter

29 Upon receipt it appears that SDL instructed Beacon to undertake the work shortly thereafter having raised their Work Order the following day dated 24 May 2019. The works were then undertaken and an invoice from Beacon was issued to SDL dated 5 June 2019.

30 The photographic evidence provided by Mr Aktaou clearly shows one section of the roof where the hip tiles are missing and the damaged guttering. There is also a second photograph showing the tiles on the floor by a small dwarf wall which appears to be directly outside the subject Property. There is also another photograph of the pathway adjoining the property and a further photograph of the erected scaffolding and finally a photograph of the new hip tiles and guttering in situ.

Respondents

31 No evidence was submitted to the Tribunal by any of the Respondents.

The Tribunal's Determination

32 The Tribunal has had regard to the evidence adduced by the Applicant, the relevant law and its knowledge and experience as an expert Tribunal. It also noted that none of the Respondents objected to the dispensation sought in the application.

33 It is clear to the Tribunal from the information supplied by the Applicant that the works were urgently required to the roof of the subject Property.

- 34 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, the Supreme Court in *Daejan* found 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.
- 35 There are essentially 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 third stage advising the leaseholders that the contract has been placed and the reasons behind the same. The dispensation sought in this matter is, in effect, a means for expediting the carrying out of this work in order to curtail damage or further damage to the subject Property as well as harm and injury to pedestrians outside the property.
- 36 In this case, the Tribunal is satisfied that the Applicant needed to attend to the works immediately and was of sufficient urgency that it was necessary to dispense with the normal consultation requirements.
- 37 In the 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.
- 38 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.

Appeal to the Upper Tribunal

- 39 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).
- 40 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.
- 41 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.

Nicholas Wint FRICS

Date: 24 November 2020