



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

Case Reference : **MAN/00DA/LDC/2020/0029**
HMCTS code : **P:PAPERREMOTE**
(audio,video,paper)

Property : **Flats 1-19, 20 Falkland Rise, Leeds, LS17
6UZ**

Applicant : **Tay Court (Falklands) Limited**

**Applicant's
Representative** : **Inspired Property Management**

Respondents : **The various Respondents referred to in
Annex 1.**

Type of Application : **Landlord and Tenant Act 1985 – s 20ZA**

Tribunal Members : **Judge J.M. Going
P.E.Mountain**

Date of decision : **22 February 2021**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face to face hearing was not held because no one requested the same, it was not necessary nor practicable, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in the Application, those supplied with it, and Applicant's bundle, all of which the Tribunal noted and considered.

The Decision

Those parts of the statutory consultation requirements relating to the works which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 11 June 2020 ("the Application") the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of the replacement of part of the roof ("the works") serving the various apartments at the property ("20 Falklands Rise"). The Applicant considered that the works should be carried out urgently.
2. The Tribunal (whose normal response times have inevitably been adversely impacted by the consequences of the covid 19 pandemic) issued Directions on 16 October 2020.
3. The Applicant provided written submissions with its statement of case and, as part of the Directions, was mandated to send copies to each Respondent by 30 October 2020.
4. None of the Respondents has indicated to the Tribunal any objection to the Application, and none of the parties have requested a hearing.

The facts and background to the Application

5. The Tribunal has not inspected 20 Falklands Rise, but understands that it is a purpose built 3 and 4 storey residential block consisting of 18 apartments constructed approximately 22 years ago. It has a complicated hipped roof which has a number of angles ridges and apexes.

6. It is further understood that each Respondent owns an apartment within 20 Falklands Rise, and is due to pay a percentage of the costs of the upkeep of its common parts and common services, including the roof.

7. The Applicant, through its agent Inspired Property Management (“IPM”) has provided a bundle of documents including the Application, its statement of its case, evidence of letters sent to the Respondents, e mails relating to and reports on the roof which include photographs and refer to a timeline of the relevant events.

8. None of the evidence provided has been disputed.

9. The first sign of a roof leak was reported in July 2019 when the occupier of a top floor flat noted a stain on its ceiling. An inspection by the letting agent found the area to be dry. It was assumed that the stain was historic, and it was painted over.

10. However, in August, the leaseholder reported that the leak had returned. Everlast Facilities Management (“Everlast”) inspected, applied a liquid waterproofing to the valley gutter above, as a temporary fix, and advised that further works would be required.

11. Problems were again reported in October, and Everlast advised that the whole of the valley gutter would need to be replaced with a high access cherry picker required for access. Photographs were appended to their report to illustrate some of the defects which included a lot of loose pointing and various broken roof tiles.

12. The problems continued, and later in the same month a further leak was reported in a second flat. The first flat also developed a hole in its ceiling.

13. City Maintenance (“CM”) carried out some roof repairs above the two flats in question in November 2019 and, again in March 2020 after it had been reported that a leak had returned in one of the flats.

14. The leaks returned again, and CM advised “this roof has had numerous historical repairs (not by us) the tiles are no longer available so some tiles have been replaced with different ill fitting types, some have been coated over, neither of which is ideal. The building needs a full scaffold and roof stripping back but this is major works – we would recommend you instruct a surveyor to advise, it’s a complicated roof, one roof leads to another and all the tiles are cut to size”

15. Earl Kendrick Associates (“EKA”) a large firm of Chartered Surveyors with offices in London, Manchester, and Brighton undertook an inspection on 27 May 2020 and issued their report on 28 May 2020. Because of the Covid 19 restrictions the inspection was carried out by means of a drone survey. That noted a number of defects such as missing roof tiles and mortar.

16. On 2 June 2020 IPM sent the Respondents a formal notice under the consultation requirements (which are more particularly referred to below) of its intention to carry out roof works. The notice explained that “the works to be carried out are to rectify roof defects such as missing or broken roof tiles and missing mortar to the ridge tiles. A further review by a building surveyor will also be carried out whilst high access equipment is on site...”.

17. On 5 June 2020 IPM received a report that the severity of the problem had escalated, and that a ceiling in one of the apartments was at risk of collapse due to heavy rainfall. (In the event it was later removed to ensure the safety of the occupants).

18. IPM advised CM of the urgency and on 9 June 2020 received a quotation of £5995 plus VAT (ie £7194) “to erect independent scaffolding, to strip elevation (marked area only) including tiles felt and lathe, to replace with all new, will not be Richmond tiles but will be similar looking tile... Please note we are confident that stripping the elevation marked will cure the ingress inside this apartment but roof in general is littered with alien tiles and glued tiles”.

19. On 10 June IPM give instructions to CM for the works to proceed as soon as possible.

20. On 12 June 2020 IPM wrote to the Respondents again explaining that the works had become urgent and its application to the Tribunal to dispense with the requirement to complete the consultation requirements.

21. IPM have confirmed that the recommended roof repairs have subsequently been completed and that there have been no further reports of water penetrating the flats in question.

The Law

22. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) (“the Regulations”) specify detailed consultation requirements (“the consultation requirements”) which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

23. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to: –

- give written notice of its intention to carry out qualifying works, invite leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the work should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, if that is not the person who submitted the lowest estimate.

24. Section 20ZA(1) states that: –
 “Where an application is made to the appropriate 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.”

25. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others* (2013) UK SC 14 (“*Daejan*”) set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements is to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation is not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord’s failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenant’s case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenant’s reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

26. The Tribunal began with a general review of the papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

27. None of the parties requested an oral hearing and, having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. Although the parties are not legally represented, the issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.

28. Having carefully considered the evidence before it, and using its own knowledge and experience, the Tribunal concluded as follows.

29. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.

30. The Application does not concern the issue of whether or not service charges will be reasonable or payable.

31. Applying the principles set out in *Daejan* the Tribunal has had to consider whether there was any prejudice that may have arisen out of the conduct of the Applicant, and whether it is reasonable for it grant dispensation.

32. The Tribunal is satisfied that IPM communicated with all of the Respondents after the full extent of the problems with the roof became apparent, and that there has since been ample opportunities for each of the Respondents to make observations.

33. The Tribunal, in the absence of any written objections from any of the Respondents, and having regard to the steps that have been taken, has concluded that the Respondents will not be prejudiced by dispensation being granted.

34. It is clear that the circumstances had the potential to severely impact on the health, safety, utility and comfort of the Respondents and their visitors.

35. The Applicant has made out a compelling case that the works were necessary, appropriate and urgent, both on health and safety grounds and also in order to mitigate potential losses both to the Respondents and in respect of any possible insurance claim.

36. The Tribunal is satisfied that to insist on the completion of the consultation requirements now would be otiose.

37. For all these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

38. It is however emphasised that nothing in this decision should be taken as an indication that the Tribunal considers that any service charge costs resulting from the works will be reasonable or indeed payable. The Respondents retain the right to refer such matters to the Tribunal under section 27A of the Landlord and Tenant Act 1985 at a later date, should they feel it appropriate.

Annex 1

Colin Chin and Ronald Tang
Michael Dallaston
Nicholas Booth
Judith Barnes and Michael Grimes
Paul Simpson
Moya McGlynn and Denise Fish
Julie Wells
Robert Pickles
Ian and Jean Crossan
Michael Grimes and Judith Barnes
R. Hoyle
Julie Leadbetter
Stefan Dabrowski
M. V. Shah
Michael Hourigan
Patrick Hourigan
Jane Green
Christopher Kiley