



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

Case Reference : **BIR/OOFK/LDC/2022/0028**

Property : **1-8 Limes Court
Uttoxeter Road
Mickleover
Derby
DE3 0DX**

Applicant : **Malcolm Carter and Susannah Segal**

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

Respondents : **The Various leaseholders of
Flats 1-8
Limes Court
Uttoxeter Road
Mickleover
Derby
DE3 0DX**

Type of Application : **An Application for the dispensation of all
or any of the Consultation
Requirements provided for by Section
20ZA of the Landlord & Tenant Act
1985**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mrs K Bentley**

Date of Hearing : **18th November 2022**

Type of Hearing : **Paper Determination**

Date of Decision : **30 November 2022**

DECISION

Background

1. By Application dated 19th August 2022, received by the Tribunal on 22nd August 2022 the Applicant, through its Managing Agents, Proxim Property Management, applied to the Tribunal for Dispensation from the Consultation Requirements imposed by Section 20 of the Landlord & Tenant Act 1985 ('the Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as Limes Court, Uttoxeter Road, Mickleover, Derby, DE3 0DX.
2. The Application requested that the matter be dealt with on the Standard Track and that it was considered that a paper determination would be appropriate. The Tribunal issued Directions dated 22nd September 2022.

The Facts

3. The property at Limes Court, Uttoxeter Road, Mickleover, Derby, DE3 0DX comprises of 8 self-contained flats.
4. The Applicant in this case is the Management Company and the Respondents are the various long leaseholders of the flats within the development.
5. The Tribunal has been provided with a copy of the lease in respect of Flat 3, dated 17th October 1968 and assumes that all the leases in respect of the various flats are in a similar form. Clause 2 of 'The Schedule' of the lease provides for the Management Company to be responsible for the repairs which are required under this Application and for which the Respondents pay a maintenance charge.
6. The Tribunal has not carried out an inspection and the matter has therefore been determined on the papers provided to it by the parties. However, the Tribunal has inspected the exterior of the property on a satellite image.
7. According to the Application, work is required to the roof. In a letter dated 4th October 2022 from the managing agents to the flat owners the Applicant confirms that it is seeking dispensation in respect of roof maintenance work to be carried out by Brindley Asphalt Ltd. It is apparent that work has recently been carried out to the fascia of the whole building and to renew the porch roof on the main entrance.
8. In order for this work to be carried out scaffolding was erected round the perimeter of the building and while the scaffolding was in place the Applicant obtained a report on the condition of the roof. This has resulted in a quotation of £4381.00 from Brindley Asphalt Ltd. It is understood that the cost of providing the scaffolding was some £12,000.00.
9. The Tribunal been provided a copy of the quotation detailing the works required to the main tiled roof. The works include:
 - a) Remove and set aside the bottom two courses of interlocking concrete tiles.
 - b) Remove the bottom two timber tiling lathes to the perimeter and cut/remove rotten under tiling felt.
 - c) Supply and install a new strip of breather membrane together with new tiling battens.
 - d) Supply and install eaves protector, reinstate the bottom two courses of interlocking concrete tiles together with replacement tiles as necessary.

10. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements to enable it to proceed with the work while the scaffolding is still in place. If the scaffolding was to be removed following completion of the work to the facias, then the cost of reinstating it prior to the work to the main roof would be in the region of £12,000.00. The Applicant wishes to save this cost which would be a considerable burden for the leaseholders and could take them several years to save on the service charge payments. This delay would also add to the cost as well as increase the risk of water ingress into the building.
11. The Applicant submits that it has consulted with the various leaseholders by way of a letter to them dated 4th October 2022. This letter enclosed a copy of the application form sent to the Tribunal together with accompanying documents, a copy of the Directions issued by the Tribunal and a copy of the specification of work together with costs from Brindley Asphalt Ltd.
12. The Applicant also sent to all the leaseholders a form which the Tribunal had requested each leaseholder to complete and return.
13. The Applicant submitted to the Tribunal copies of the completed forms which confirmed that the following leaseholders supported the application for dispensation from full consultation for the works and agreed that the tribunal may decide the matter on the basis of written representation only:
 - i) Mr S Cordery, Flat 1.
 - ii) Mr T Neville, Flat 3.
 - iii) Mr S Cope, Flat 4.
 - iv) Mr D Cordery, Flat 6.
 - v) Mr A Shawcross, Flat 7.
14. Tribunal understands, based on the Application and the Applicant's submission that the Application for Dispensation is sought:
 - a) Because there is a risk that water could ingress from the roof causing damage to the building and in particular the top floor flats.
 - b) That it is preferable to carry out the work while the scaffolding is in place to avoid the additional cost of re-erecting the scaffolding in the near future at a cost in the region of £12,000.00.
15. The Tribunal infers from the submissions that if the full consultation process was to be undertaken, the delay could result in greater potential risk of water ingress and the additional cost of carrying out the work as a separate item rather than in conjunction with the works already undertaken with inevitably additional costs to the lessees.
16. The Tribunal notes that the Leaseholders have all been informed and had an opportunity to comment on the proposed works and costs but no observations objecting to the proposed works were received. On the contrary, five of the eight leaseholders have expressed their support for the application.

The Law

17. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
18. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).
19. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application to grant dispensation may be made before or after the commencement of the works.

The Tribunal's Decision

20. It is evident to the Tribunal that although it's the work is not currently urgent; the roof has deteriorated and is likely to require repair in the near future.
21. It is also evident to the Tribunal that if the full consultation process is followed then the works will be delayed to the extent that the cost will increase considerably due the requirement to re-erect the scaffolding which is presently in place together with any additional inflationary costs due to the delay.
22. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult. Indeed, they would, in the Tribunal's view, be significantly prejudiced if the work is delayed.
23. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should resolve the defects to the roof.
24. The Tribunal is also influenced by the fact that none of the Respondents have made any submission to the Applicant or, more importantly to the Tribunal opposing the Application but that five of the eight Respondents have actually written confirming their support.
25. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.
26. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

APPEAL

27. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS.

Chairman.

First-tier Tribunal Property Chamber (Residential Property)