



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

**Case Reference** : **MAN/00EQ/LDC/2021/0051**

**Property** : **Bollin Heights, 3 Macclesfield Road,  
Wilmslow SK9 1BZ**

**Applicants** : **Plantview Limited**

**Respondent** : **The Leaseholders (see Annex A)**

**Type of Application** : **Section 20ZA, Landlord and Tenant Act 1985**

**Tribunal Members** : **A M Davies, LLB  
J Jacobs, MRICS**

**Date of Determination** : **15 February 2022**

**Date of Decision** : **25 February 2022**

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**DECISION**

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## DECISION

The consultation requirements of section 20 of the Landlord and Tenant Act 1985 are dispensed with in relation to

- (a) Investigating the cause of water damage to flats 13 and 16 Bollin Heights; and
- (b) consequent work on the balconies of flats 26 and 27;

carried out by Rescom Limited in April and May 2021 at a cost of £17,198.08.

## REASONS

### BACKGROUND

1. The Applicant is the registered proprietor of Bollin Heights (“the Property”) and landlord of the residential flats in the building. In or about 2020 the leaseholders informed the Applicant that water leaks were damaging the interior of the Property.
2. A report on the source of the leaks, and also on the condition of the flat roofs of the Property, was commissioned from Trevaskis Consulting, who reported on 8 January 2021. The consultants recommended that investigative work be carried out to the balconies of flats 26 and 27 to establish the cause of leaks at flats 13 and 16. Flat 13 in particular was badly damaged: part of the ceiling collapsed and the flat became uninhabitable.
3. On 21 April 2021 the Applicant started a consultation procedure as required by section 20 of the Landlord and Tenant Act 1985 (“the Act”). The initial notice referred to the works to be carried out as “Balcony exposing/investigations following leaks”. At about the same time the Applicant obtained quotations for the investigation from Groundlevel Services and Rescom Limited. Groundlevel Services’ undated estimate quoted £9,000 plus VAT. Rescom’s estimate was not produced to the Tribunal, but on 28 April 2021 they invoiced £8,000 plus VAT for the same work.
4. Given the extreme nature of the damage to flat 13, the Applicant abandoned the section 20 procedure and instructed Rescom Limited to carry out the work at once. The investigation established that there was a defect in the system for removing rainwater from the balconies, and rectification work was subsequently carried out by the same company.

### THE LEASE

5. The leases of flats in the Property create a term of 250 years from 1 January 2017. They provide for leaseholders to pay, through a service charge, for the Services provided by the Applicant.

6. Services are defined at Schedule 7 Part 1, and include “...repairing and replacing the Retained Parts”. The Retained Parts amount to all parts of the Property other than the demised flats and include the structure of the balconies, including everything below the floor surface.

## **THE LAW**

7. Section 20 of the Act obliges a landlord to carry out a consultation exercise prior to committing to, among other things, any work that will cost a leaseholder more than £250. Part 2 of the Service Charges (Consultation etc)(England) Regulations 2003 provides further detail as to the consultation procedure. However, section 20ZA permits a landlord to apply to this Tribunal for a determination permitting the landlord to dispense with the procedure if the Tribunal “is satisfied that it is reasonable to dispense with the requirements”.
8. In *Daejan Investments Limited v Benson and others* [2013] UKSC 14 the Supreme Court provided guidance as to when dispensation would be reasonable. The matters to be considered were
  - (1) would leaseholders suffer any prejudice if the landlord failed to consult?
  - (2) relevant prejudice would normally be either having to pay for inappropriate works, or paying too much for the work;
  - (3) had the leaseholders shown that they would suffer some relevant prejudice, and what they would have done to avoid such prejudice had the usual consultation taken place?

The court also made it clear that dispensation may be granted conditionally by the Tribunal.

## **DETERMINATION**

9. The application has been determined without a hearing, on the basis of written representations of the parties.
10. The Tribunal has been provided with correspondence from one of the leaseholders, Ms Chloe Sinclair of flat 18. Ms Sinclair queries why insurance cover was not available for the work, given that the Property was converted for residential use in or about 2017. She has also asked for clarification as to the extent of the dispensation, given that a considerable amount of further work on the Retained Parks is likely to be needed.
11. Ms Sinclair has not sought to show that she or other leaseholders have been prejudiced by their inability to respond to a section 20 consultation procedure, i.e. that their responses to that procedure, if taken into account by the Applicant, would have resulted in any difference to the works or the cost of them.

12. The Applicant has shown that the insurers of the Property were approached and that they claimed that the work was not covered by the buildings insurance policy. The Tribunal has no evidence that other claims could or should have been investigated, for example in relation to the design or construction of the balconies.
13. As the repair works had become urgent due to the serious damage being caused to the interior of the building, dispensation from the section 20 consultation procedure is granted. The leaseholders' respective contributions to the cost of the work are not limited by section 20 to £250.
14. It should be noted that this decision does not preclude an application under section 27A of the Act as to whether the work was carried out to a reasonable standard or at a reasonable cost, or whether the cost is properly included in the service charge payable by the leaseholders.

Mrs AM Davies  
Tribunal Judge  
25 February 2022

## Annex A

### Leaseholders

Mr J Hornsby

Mr & Mrs Ward

Mr V Aggarwal

Ms C Rodrigues

Mr M Safideen

Leela Capital Ltd.

Mr B Turner

Ms A Portlock

Mr G Glendon

Mr M Mehrabi

Ms S Mason

Ms C Halewood

Mr S Fraser

Ms K Foster

Ms Rl Vora

Ms G Kozłowska

Mr & Mrs Hall

Ms C Sinclair

Ms D Ascott-Meakin

Ms L Rossetti

Ms L Berrisford

Mr D Burke

Mr D Lanigan

Mr & Mrs D Lanagan

Mr & Mrs Davies

Ms K Drzewiecka

Mr T Barrand

Mr P Bustamante

Ms R Hartley

Mr A Watson

Mr M Greig

Hale Fitness