



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

Case References	:	BIR/00CW/LDC/2018/0007
Property	:	Flats 1 to 50 Sutton Court, Wolverhampton, WV4 6QW
Applicant	:	Mrs Bernadette Willmott
Representative	:	Castle Estates (Property Management Services) Limited
Respondents	:	The long leaseholders of Flats 1 – 50 Sutton Court
Type of Application	:	Application under section 20ZA of the Landlord and Tenant Act 1985 to dispense with consultation requirements in respect of qualifying works
Tribunal Members	:	Judge M K Gandham Deputy Regional Valuer Mr V Ward
Date of Inspection	:	17th September 2018
Date and venue of Hearing	:	24th October 2018 First-tier Tribunal, Centre City Tower, 5-7 Hill Street, Birmingham B5 4UU
Date of Decision	:	10 January 2019

DECISION

Decision

1. The Tribunal determines that it is not reasonable to dispense with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in relation to the repairing works to the roof of the building comprising Flats 1 to 50 Sutton Court, Wolverhampton, WV4 6QW, as more particularly defined in the Applicant's application.

Reasons for Decision

Introduction

2. On 3rd August 2018, the Tribunal received an application from Mrs Bernadette Willmott ('the Applicant') under Section 20ZA of the Landlord and Tenant Act 1985 ('the Act'), for dispensation from the consultation requirements contained in Section 20 of the Act for works to be carried out at Flats 1 – 50 Sutton Court, Wolverhampton, WV4 6QW 2 ('the Property'). The application related to the replacement of the roof – in particular the tiles, felt and wooden battens. The application stated that the works were extensive and urgently required.
3. A Directions Order was issued on 8th August 2018, requiring the Applicant to forward to each of the long leaseholders: a copy of the Directions Order, a copy of the application, a statement detailing the purpose of the application and copies of any specialist reports.
4. The Tribunal received letters from various respondents stating that the Applicant had not complied with the timetable laid out in the Directions Order and a second Directions Order was issued on 6th September 2018. This order extended the time for receipt of any statements from the Respondents and confirmed that an oral hearing would be required. Submissions objecting to the dispensation were received from a number of the respondents.
5. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements, under section 20ZA of the Act. **This Application does not concern the issue of whether any service charge costs are reasonable or payable and the Respondents will continue to enjoy the protection of section 27A of the Act.**

The Law

6. Section 18 of the Act defines what is meant by the term 'service charge' and defines the expression for 'relevant costs'. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred.

Section 20 details consultation requirements and section 20(1) provides:

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or*
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works unless certain consultation requirements have been either complied with or dispensed with by First-tier Tribunal (Property Chamber).

The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These, amongst other things, require the landlord to serve on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants' observations. There is also a duty on the landlord to seek estimates from any contractor nominated by or on behalf of tenants. The requirements also detail the procedure for the preparation and delivery of the landlord's proposals.

Section 20ZA of the Act provides:

(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises...

Therefore, section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements “*if satisfied that it is reasonable*” to do so.

The Leases

7. The leases of the flats contain a provision in clause 4 (i) of the Sixth Schedule confirming that the Lessor is responsible:

“(i) To maintain repair redecorating and renew:-

(a) The main structure roof gutters and rainwater pipes of the Building and garage...”

The Inspection

8. The Tribunal inspected the Property on 17th September 2018. Ms Corban (the block manager), Mr Stanley (the company manager) and Mr James (a director) - all from Castle Estates (Property Management Services) Limited (‘the Applicant’s Representative’) - attended on behalf of the Applicant. Mr Hough - from Hough Chartered Building Surveyors - who had produced the report on the roof dated 14th May 2018 upon which the application was based (‘the Report’), accompanied them. A number of the Respondents also attended, namely, Mr Greenfield (the long leaseholder of Flat 45), Mr and Mrs Noble (the long leaseholders of Flat 2), Mr Dobson (the long leaseholder of Flat 11), Mr Langston (the long leaseholder of Flat 6) and Ms Thomas (the long leaseholder of Flat 22).
9. The Property is a development encompassing a two-storey building, communal garden areas, three blocks of garages, private drives and a parking area. Although the building was originally proposed to include 50 flats, number 13 was not completed, so the Property comprises 49 apartments set out in a horseshoe shape around the parking area.
10. The building is of a traditional construction with a pitched, tiled roof. There are several communal areas inside the building from which the ground floor and first floor flats can be accessed. Several of these communal areas contain roof traps, off the first floor landing area, giving access to the roof space.
11. The Tribunal, along with Mr Hough and one of the respondents, individually inspected all of the relevant roof spaces, other than those to which access could not be gained due to the fact that they had been locked by first floor occupiers. Many of the traps were too small to allow full access, but these were visually inspected from the access trap. The Tribunal also inspected the bathroom of No 24 Sutton Court and the garage block.

The Hearing

12. The hearing was held on 24th October 2018. The Applicant did not attend but was represented by the aforementioned Mr Stanley, Mr James and Mr Hough. Mr Reynolds, Mr Langston, Mr Powell, Mr and Mrs Weaver, Mr Greenfield and Mr Thompson also attended the hearing - the other respondents did not attend.
13. At the hearing, the Applicant’s Representative referred to email correspondence with their buildings insurers. This documentation had not been included within the papers that had been previously submitted. The Tribunal, therefore, requested a copy of this correspondence to be

forwarded to the Tribunal and gave the Respondents an opportunity to make any submissions upon the same.

Applicant's Submissions

14. Mr Stanley, on behalf the Applicant, stated that in the early part of the year three of the long leaseholders had complained about water ingress in the roof space which had caused damage to their flats. He stated that the Applicant's Representative had instructed a roofer, who had concluded that the roof needed to be re-stripped and felted.
15. He stated that the Applicant's Representative had started a section 20 consultation process for these works, however, some of the Respondents queried whether the proposed works were required. At this point, the Applicant's Representative instructed Mr Hough to carry out a professional survey on the state of the roof.
16. Mr Hough stated that the roof coverings were approximately 60 years old and at the end of their life expectancy. He stated that the concrete tiles allowed moisture penetration, which leads to moss and lichen growth. He stated that this could increase the load on the tiles to three times the usual load. He stated that carrying out isolated repairs could be costly.
17. During questioning by the Respondents, Mr Hough confirmed that he had not stated in his report that the works were urgent, but that the roof was reaching the end of its serviceable life and would be in need of complete replacement.
18. Mr James stated that they had been in touch with their buildings insurers who had stated that, under the policy, the roof was required to be in good state of repair and that, based on the survey, the insurers were insisting upon a full roof replacement.
19. They stated that the Applicant believed that it would be better to apply for dispensation because they believed that the project would become quite complicated and because there was a query on whether any damage caused in the interim would be covered by their buildings insurance. As such, they considered the works to be urgent.
20. The Tribunal had also received written submissions from Mr Hickman (the long leaseholder of Flat 42 Sutton Court) and Mr and Mrs Johnstone (the long leaseholders of Flat 36 Sutton Court). Both confirmed that their flats had suffered from leaks from the roof space.
21. Mr and Mrs Johnstone stated that the leak at their flat was during the period of heavy snow earlier in the year. They believed it was caused by snow being driven under gaps in the roof tiles. They also stated that they

had noticed that the hessian lining in the roof space was hanging down in places and that there were gaps in some of the other roof tiles.

22. Mr Hickman stated that there had been two leaks from the roof space at his flat. The first in the bathroom and the second, a more substantial leak, which had caused staining throughout the length of his flat. He stated that he had carried out temporary sealing and patching but that there was a vast area of missing and disintegrating felt in the roof space above his flat. In his opinion a new roof was required as he believed that it would make more financial sense than carrying out costly patching. He was also concerned to hear that the roof was no longer covered by the insurers.

Respondents' Submissions

23. Mr Dodson (the long leaseholder of Flat 11) stated that he believed that the application to the Tribunal was 'premature' and 'ill thought out'. He stated that he did not believe the work was necessary and had provided to the Tribunal photographs, which he submitted, illustrated that the tiles were in good condition. He stated that, other than a few small pin sized holes, the roof was in good order and there was no sign of any damp in the roof space on the day of the Tribunal's inspection. He stated that the Applicant should have to go through the consultation procedure.
24. Mr Dodson had previously provided various written submissions to the Tribunal. He confirmed that the Applicant's Representative had been in contact with the Respondents regarding the leaks from March 2018 to the middle of June 2018, after which correspondence unexpectedly stopped. He had supplied copies of various items of correspondence between him and the Applicant's Representative.
25. He stated that some of the Respondents had informally asked one or two roofers to inspect the roof and that the roofers had been surprised as the roof appeared to be in good order. (This was also referred to in an email received from Mr Langston (the long leaseholder of Flat 6)).
26. In relation to the correspondence with the insurers, Mr Dodson stated that there were no details regarding the chain of correspondence and that he believed the referral to the insurers to be a deliberate act to put the Respondents under duress.
27. Mr Weaver (the long leaseholder of Flat 27) stated that the Applicant had referred in the application to works being 'urgent'. He stated that he did not believe this was the case and that Mr Hough had confirmed this when he was giving his evidence.
28. Mr and Mrs Weaver had provided two written submissions to the Tribunal in relation to the application. They stated that they believed the prejudice to the Respondents outweighed any 'urgency' and that it was not reasonable to give dispensation.

29. They stated that they had not received a copy of any report by the initial roofer the Applicant had instructed, but had received a section 20 Notice in April 2018 (and provided a copy of the same to the Tribunal). They stated that they then received a letter on 23rd May 2018 informing them that some of the leaseholders were unhappy with the previous conclusions of the roofer and consultation process and that they had instructed Hough & Co to commission a report on the roof. They stated that they would be halting the previous section 20 consultation process and making an application to the Tribunal for dispensation.
30. Mr and Mrs Weaver submitted that the Report suggested that there were relatively few places where the roof had failed and that there was no direct evidence that the failing felt caused the leakage.
31. They referred to the decision of the Supreme Court in *Daejan Investment Limited v Benson et al* [2013] UKSC 14 and stated that the Court, in that case, had decided that the degree by which the landlord had failed to follow the section 20 process was not important but that the prejudice to the tenants flowing from it was. In this matter, they stated that the Applicant was aiming to seek relief prior to the section 20 process even commencing. They did not believe that the Applicant had proved any 'urgency' which could outweigh the potential prejudice to the Respondents. They believed that the sensible approach would be to allow emergency repairs to be carried out to rectify the current leaks, as there was no evidence that the roof could not last for another few months whilst any consultation took place.
32. In relation to the correspondence with the insurers, they submitted that the Report could not be used to refuse a claim, as the Report had stated that there were no current defects in the tiles. They submitted that they were not against replacing the roof in its entirety but that it should be clear that the works were necessary and that a sensible plan should be in place regarding the costs. They hoped that the section 20 process could facilitate this and that it would be a detriment to the Respondents if that process were not to occur.
33. Mr Langston, in his written submissions to the Tribunal, also referred to the fact that the email correspondence with the insurer was incomplete and also to the fact that Mr Hough, at the hearing, had admitted that the works were not urgent.
34. Mrs Noble (the long leaseholder of Flat 2) had also provided written submissions and stated that the only problems she had found upon the day of the Tribunal's inspection were a few leaks that could easily be repaired. She stated that her roof space, and that of her neighbours, was bone dry. She believed the proposed works to be an unnecessary expense. In addition, she stated that no attempt had been made to carry out the repairs and that the Applicant's finance director had confirmed that no insurance claim had been made. She stated that the Applicant had not

handled the matter very well and that the insurers would assess the validity of any claim in any event.

35. The remainder of the respondents who attended the hearing concurred that dispensation should not be granted.

The Tribunal's Deliberations

36. The Tribunal considered all of the written and oral evidence submitted and summarised above.

37. The Tribunal must decide whether it is reasonable for the works to proceed without the Applicant first complying with the section 20 consultation requirements to obtain further estimates, as is required under the Act.

38. Section 20ZA confirms that a tribunal may make a determination to dispense with all or any of the consultation requirements, if it is satisfied that it is "reasonable" to dispense with the same. The leading authority for the way in which the Tribunal should approach this question was considered in the decision of the Supreme Court in *Daejan Investment Limited v Benson*, which determined (amongst other things) that the correct approach was to consider the extent to which the tenants might be prejudiced by a lack of consultation. In considering that issue, the legal burden of proof rests with the applicant, but the factual burden of identifying some relevant prejudice rests with the respondent. Relevant prejudice refers to a disadvantage that the respondent would not have suffered had the consultation requirements been fully complied with.

39. In this matter, the Applicant stated in her application form that the roofing was reaching the end of its life and that three roofing areas were in need of urgent repair. In addition, the Applicant stated that the buildings insurance required the roof to be in a good state of repair, therefore, any damage caused by roof leaks would not be covered. Finally, the Applicant stated that the works were "extensive and urgently required".

40. The Respondents submitted that they were not satisfied that the works were urgent and some of them were not satisfied that the works were required at all. They did not agree that dispensation should be granted in this matter due to the prejudice that would be caused to them by the lack of consultation, as required under section 20 of the Act.

41. The Tribunal was provided with a copy of the Report on which the Applicant had relied upon in her application. The Report referred to the roof covering being approximately 53 years old and stated that the tiles had become porous and that the dead loading "could cause future structural damage and roof failure". The Report also stated that "no significant deflection or roof defects were noted at the time of inspection" and that "ongoing monitoring will be necessary". The Report concluded by stating that, in their opinion, the roof coverings were "reaching the end

of their serviceable life expectancy and will be in need of complete replacement”. The Report referred to the potential costs for the works amounting to a sum of £86,100.00.

42. The Tribunal is satisfied that some leaks have occurred, however, these appear to have occurred during the extreme weather conditions encountered in the earlier part of the year. No further reports of leaks appear to have been submitted in the intervening period, either from the three flats that experienced the leaks or from any other flat owners. The Tribunal notes that these repairs may be required prior to the onset of another bout of severe weather; however, the application to the Tribunal relates to works to the entire Property.
43. The Tribunal notes that at no point, either in the Report or in the oral evidence given by Mr Hough, did he state that the roofing works were “extensive” or “urgently required”. In fact, the Report clearly referred to “future structural damage” and “ongoing monitoring”. It also stated that the roof coverings were “reaching the end of their serviceable life” – clearly implying that there was some life left in them. As such, the Tribunal does not consider the Report provides any evidence to substantiate the Applicant’s assertion that “the works are extensive and urgently required”.
44. The potential lack of urgency in this matter is further evidenced by the fact that the leaks appear to have occurred in March, the Report produced in May, but the application to the Tribunal was not made until August.
45. Having considered all of the evidence submitted, the Tribunal is not satisfied that the works are so urgent that it would be reasonable for dispensation from the consultation requirements to be granted taking in to account the potential prejudice to the Respondents and substantial costs involved to them.
46. The Tribunal notes the comments of the insurers in their correspondence with the Applicant’s Representative, but does not consider this would make the dispensation of consultation any more reasonable. In any event, the Tribunal considers that it would be unlikely that any extensive works could be carried out over the winter period and the Tribunal does not consider that the failure to grant dispensation would have any significant impact on the time taken for the works to commence.
47. The Tribunal would also ask the parties to note that an application for dispensation of the section 20 consultation procedures is not so that leaseholders are provided with reassurance that works are required. Conversely, the failure to grant dispensation should not be construed to suggest that the Tribunal consider that future works are not required. It is simply confirmation that the Tribunal does not, based on the evidence submitted, consider it reasonable for any consultation process to be dispensed with.

Appeal

48. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application 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).

M. K. GANDHAM

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Judge M. K. Gandham