



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

**Case Reference** : **BIR/00CN/LDC/2018/0013**

**Property** : **2 to 12 (Evens) Riverside Drive Selly Park  
Birmingham B29 7ES**

**Applicant** : **Chase Riverside Apartments Management  
Company Limited**

**Representative** : **Pennycuik Collins Chartered Surveyors**

**Respondents** : **The Leaseholders of 2 to 12 (Evens)  
Riverside Drive**

**Type of Application** : **An Application under Section 20ZA of the  
Landlord and Tenant Act 1985 for  
dispensation of the Section 20 consultation  
requirements.**

**Tribunal Members** : **Mr Vernon Ward BSc (Hons) FRICS  
Judge David R Salter**

**Date of Decision** : **14 January 2019**

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**DECISION**

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## BACKGROUND

1. The Application requests the Tribunal to grant a dispensation from the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) in respect of repairs required to the apartment block comprising apartments 2 to 12 (Evans), Riverside Drive, Selly Oak, Birmingham B29 7ES (‘subject property’) situated within the Riverside Apartments development.
2. The application form states that the Applicant, Chase Riverside Apartments Management Company Limited, is the landlord and management company of the subject property, whilst the Respondents are the lessees/leaseholders of the six apartments contained therein.
3. This determination is retrospective as the works were carried out in mid-December 2018.
4. The works carried out were the installation of a dry verge system to the roof as the existing mortar fillets had deteriorated and had fallen out in places. The works were required to prevent water ingress to the upper floor apartments and also to remove the danger of possible falling objects.
5. The Applicant had invited three quotations but received the following:

<b>Contractor</b>	<b>Cost including VAT (Cost per leaseholder)</b>	
Dent and Partners Ltd	£7,104.00	(£1,184.00)
Integral Roofing Maintenance Services Ltd	£7,590.00	(£1,265.00)
6. Under the provisions of the 1985 Act and the 2003 Regulations, the Applicant is required to consult if the cost of the works is in excess of £250.00 including VAT per leaseholder. The works carried out are therefore qualifying works within the meaning of section 20ZA (2) of the 1985 Act.
7. The Applicant claims that the reason behind the urgency of the works is to save the lessees/leaseholders excessive scaffolding costs by utilising scaffolding already erected for the purposes of external redecoration.
8. Following Directions of the Tribunal, copies of all quotations and ancillary information were forwarded to all leaseholders. The Tribunal received no representations from any lessee/leaseholder.

## THE LEASE

9. Relevant definitions within the lease submitted to the Tribunal on behalf of the Applicant are as follows:

Service Charge (clause 1.32):

*“the Service Charge” means a sum equal to one sixth of (or such other proportion as may be determined pursuant to Part I of the Fourth Schedule) of the aggregate Annual Maintenance Provision for the whole of the Apartments Estate for each maintenance year (computed in accordance with Part II of the Fourth Schedule)”.*

Annual Maintenance Provision (clause 1.3):

*“Annual Maintenance Provision” means the provision required to be made in any Maintenance Year for the Maintenance of the Apartments Estate computed in accordance with Part II of the Fourth Schedule”.*

Blocks (clause 1.10):

*“the Blocks” means the Apartment Block and the Garage Blocks and the term “Block” means any one of them”.*

10. By virtue of clause 2.2 of the lease, the lessees/leaseholders covenant to pay *“the service charge and a due proportion of the maintenance adjustment in accordance with paragraph 24 of Part II of the Fourth Schedule”*. The Tribunal considers that “Fourth Schedule” is a typographical error and this should have stated “Third Schedule” which fits into the context of the lease and further there is no paragraph 24 of the Fourth Schedule. The Tribunal has therefore construed it as such.

11. Paragraph 24 of Part II of the Third Schedule states as follows:

*“In respect of every Maintenance Year to pay the Service Charge to the Management Company by monthly instalments in advance on the first day of each month.....”*

12. Paragraph 2 of Part II of the Fourth Schedule sets out how the Annual Maintenance Provision is made up. Clause 2.1 refers to:

*“the expenditure estimated as likely to be incurred in the maintenance year by the Management Company for the purposes mentioned in the Fifth Schedule”.*

13. The Fifth Schedule sub-titled “*Purposes for which the Service Charge is to be applied*” sets out the scope of the service charge. Paragraph 1.2 provides as follows:

*“to keep in good repair and condition the interior and exterior walls and ceilings and floors of the Blocks and the whole of the structure roof foundations and main drains.....”*

## **THE INSPECTION**

14. The Tribunal carried out an inspection of the subject property, which comprises one of several blocks located within the Riverside Drive development, on 3 January 2019. Present at the Inspection were Mesdames Lyndsey Cannon-Leach and Laura Lock and Mr Hasan Sidat, all of Pennyquick Collins Chartered Surveyors, the Applicant’s managing agent.
15. The subject property comprises six apartments arranged over ground, first and second floors, with two flats per floor. The development known as Riverside Drive is gated and was constructed in 2005.
16. The Tribunal inspected the communal areas pertinent to the subject property externally. It was noted that repairs to the roof would require scaffolding or other specialised equipment due to the height of the building.
17. The Tribunal was told that the defects were noted when external decorating works were being carried out to the subject property. The Applicant considered it prudent to carry out the works immediately with the benefit of the existing scaffolding in place as to take it down and then re-erect it would have entailed an additional cost of approximately £6,000.00. Further, the weekly charge for the existing scaffolding was approximately £500.00. There was therefore a strong financial motivation, in addition to the necessity of getting the works done, to have the works carried out as quickly as possible.

## **THE LAW**

18. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.

19. There are essentially three stages in the consultation procedure, the pre tender stage; Notice of Intention, 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.
20. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

### **THE TRIBUNAL'S DETERMINATION**

21. The provisions cited from the lease enable the cost of the works to be recovered from the lessees/leaseholders by way of the service charge.
22. It is clear to the Tribunal from the information supplied by the Applicant that the works were required. A failure to carry out the works could have led to water damage to the subject property and also falling mortar could potentially have been dangerous.
23. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. However, following the Supreme Court's judgment in *Daejan Investments Limited v Benson et al* [2013] UKSC 14, the Tribunal in considering whether dispensation should be granted in this matter should take into account the extent to which lessees/leaseholders were prejudiced by the landlord's failure to consult.
24. The Tribunal cannot see that the lessees/leaseholders have been prejudiced by the consultation procedures not being followed. The Applicant has used specialist contractors to obtain two quotations to ensure that the cost of the works was reasonable and the lessees/leaseholders appear to have been kept fully informed as to the works proposed. No lessee/leaseholder has made representations of any kind to the Tribunal.
25. The Tribunal is satisfied that the works were required and that, on the evidence provided, it was reasonable to dispense with the consultation requirements of section 20 of the 1985 Act. Accordingly, dispensation is duly granted.
26. Parties should note that this determination does not prevent any later challenge by any of the respondent leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.

27. In making its Determination, the Tribunal had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

## **APPEAL**

28. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

## **V WARD**