



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

Case Reference : **BIR/31UE/LDC/2019/0001**

Property : **1-5 New Street
Earl Shilton
Hinckley
Leicestershire
LE9 7FS**

Applicant : **1-5 New Street Earl Shilton Management
Company**

**Applicant's
Representative** : **Bradgate Property Management Limited**

Respondents : **Various long Leaseholders of Flats in the
development**

Type of Application : **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)
Judge S McClure**

Date of Inspection : **15th April 2019**

Hearing : **Paper Determination**

Date of Decision : **16th April 2019**

DECISION

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Background

1. By Application dated 18th January 2019, the Applicant, through its Managing Agents, Bradgate Property Management Limited, 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 1-5 New Street, Earl Shilton, Hinckley, Leicestershire, LE9 7FS.
2. The Application was received by the Tribunal on 21st January 2019 following which the Tribunal issued Directions on 4th February 2019. Further Directions were issued on 8th March 2019.

The Facts

3. The property at 1-5 New Street, Earl Shilton, Hinckley Leicestershire comprises of 12 self-contained flats originally converted from a shoe factory. The Tribunal understands that the conversion was completed some 14 years ago.
4. The Applicant in this case is the Management Company and the Respondents are the various long leaseholders of the flats whose details are given in the Schedule attached to this decision.
5. Schedule 6 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 carried out an inspection on 15th April 2019 in the presence of Mr A Wray of Bradgate Property Management Limited (the Applicant's Representative) and Mr M Harbot (the builder carrying out the work). None of the Respondents attended.
7. The property comprises 12 flats set out on the ground, first and second floors. The property is brick built surmounted by a pitched roof. The Tribunal inspected the floor to the communal entrance hall and to Flat 2, which is also affected.
8. According to the Application, work is required to repair the main floor above the cellar to the property where rot has been found. This is the main entrance to the property.
9. The Tribunal noted at its inspection that work had commenced and that most works had actually been undertaken although the treatment of the floor timbers that did not need to be replaced was still awaiting completion. It is evident to the Tribunal that works were required to be undertaken.
10. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements as it considers the work to be urgent. The Applicant also confirms that it has carried out some consultation with the leaseholders.

11. Briefly the timeline is as follows:

- a) Following the discovery of rot to the floor the Applicant wrote to all the long Leaseholders on 7th December 2018 highlighting the issues and informing them that with prompt action it was hoped the main floor could be saved with areas of rot being removed, timbers treated and ventilation provided. At the same time the Applicant proposed to arrange for the floor to be temporarily supported.
- b) An estimate was received from a local builder dated 17th January 2019 in the sum of £6740.00 plus VAT. The Leaseholders were advised that funds were available to carry out the works and that an application for dispensation would be required rather than carrying out the usual Section 20 consultation.
- c) By letter to the Tribunal dated 5th February 2019 the Applicant confirmed that it had written to all the Leaseholders with a copy of the Tribunal's Directions No 1, a copy of the Application Form and a covering letter.
- d) By email to the Tribunal dated 7th March 2019 the Applicant confirmed that it had received no forms of objection from any of the Respondents.
- e) By a subsequent email dated 10th April 2019 from its Representative, the Applicant confirmed that *'due to the floor dropping further a decision was taken to proceed with the works to prevent any further deterioration and damage'*.

12. The Tribunal understands, based on the Application, that the following works are required:

- a) Prepare the floor, remove rotting joists and replace (approximately 8 joists).
- b) Remove approximately 9 sq. m of delaminated plyboard and replace.
- c) Treat all accessible floor structure.
- d) Lag the water pipes to the cellar.
- e) Remove vinyl floor covering to the corridor, inspect the sub structure, repair (if required) and fit new vinyl floor covering.
- f) Cut out and reflash side access gully.
- g) Excavate side access to below internal floor level.
- h) Fit new air bricks as necessary and build dropped wells to retain ground from air bricks as required.
- i) Reinstate in cellar including plastering and decoration as required.

13. The quotation for £6740.00 plus VAT is from Harbot Builders Limited, 67 Carlisle Street, Leicester, LE3 6AH and is dated 17th January 2019. A copy of the quotation was provided to the Tribunal.

14. The Tribunal infers from the submissions that if the full consultation process was to be undertaken, the delay could result in further damage to the structure of the floor which could be a danger to the Leaseholders. This could also result in more extensive works being required with inevitably additional costs to the lessees.
15. The Tribunal notes that the Leaseholders have had an opportunity to comment on the proposed works and costs but no observations were received. The Tribunal enquired at the inspection, from the Applicant's Representative, if any further representations or comments had been received from the Respondents and it was confirmed by Mr Wray that no representations from any of the Respondents had been received by him.

The Law

16. 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.
17. 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)).
18. 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

19. It is evident to the Tribunal that the work is urgent, and if the work is delayed further damage (which would be more expensive to repair) could occur.
20. It is also evident to the Tribunal that the defects to the floor presented a real potential danger to anyone walking on it.
21. 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.
22. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should resolve the defects to the rotten floor.
23. 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 either opposing or commenting on the Application.
24. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.

25. 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

26. 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)

SCHEDULE OF RESPONDENT LEASEHOLDERS

FLAT NUMBER	NAME OF OWNER	ADDRESS
1	Mr R Madhani	24 Kingcup Close, Leicester, LE3 3JU
2	Mr & Mrs R N Hill	16 Gorham Rise, Broughton Astley, Leics, LE 6QR
3	Mr P McCutcheon	7 Welsh Road, Balsall Common, Coventry, CV7 7QZ
4	Mr S Kelly	Apmt 4, 1-5 New Street, Earl Shilton, Leics, LE9 7FS
5	Miss L R Martin	41 Main Street, Newbold Verdon, Leics, LE9 7NN
6	Mr S Firth	82 Altcross Road, Liverpool, L11 4UP
7	Ms J Beale	Apmt 7, 1-5 New Street, Earl Shilton, Leics, LE9 7FS
8	Hedsor Property Management Ltd	18 The Crescent, Maidenhead, Berks, SL6 6AB
9	Mr B Andrews	11 Sunnydale Road, Hinckley, Leics, LE10 0PB
10	Ms S Robinson	Apmt 10, 1-5 New Street, Earl Shilton, Leics, LE9 7FS
11	Mr s & Mrs K Buddun	1 Bottom Pond Cottages, Morestead, Winchester, S21 1JE
12	Mr G S Bowyer	Apmt 12, 1-5 New Street, Earl Shilton, Leics, LE9 7FS