



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

Case Reference : **MAN/36UF/LDC/2018/0038**

Property : **Derwent Court, Main Street,
Howsham, York, YO60 7PB**

Applicant : **Derwent Court Management
Company Limited**

Representation : **Louise Rinder
Watson PM**

Respondents : **Various Leaseholders, see Annexe A**

Type of Application : **Under section 20ZA of the
Landlord and Tenant Act 1985
(‘the Act’) for dispensation from
the consultation requirements in
respect of qualifying works**

Tribunal: : **Mrs A J Rawlence MRICS
Mrs Hillary Clayton JP**

Date of Application : **21 November 2018**

Date of Determination : **23 April 2019**

Date of Decision : **31 May 2019**

DECISION

DETERMINATION

The Tribunal grants dispensation from the consultation requirements contained in section 20 of the Act and the associated Regulations in respect of the qualifying works, the subject of the Application.

Reasons for the Tribunal's determination

Introduction

1. On 21 November 2018 Derwent Court Management Company Limited ('the **Applicant**') applied to the Tribunal ('the **Application**') for an order under section 20ZA of the Act dispensing with the consultation requirements contained in section 20 of the Act and associated regulations in respect of Derwent Court, Howsham YO60 7PB ('the **Property**'). The Respondents are the leaseholders of the 8 flats at the Property listed in Annexe A to this Decision.
2. Section 20ZA (1) of the Act provides as follows:

'(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 do so.'
3. The works the subject of the Application, which had been commenced but not completed at the date of the Application, involved repairs to the clock tower at the Property. The Applicant stated that the reason for the urgency was that it became apparent that works were required to prevent further water ingress to the clock tower. Further details are contained in the paragraphs containing the Applicant's submissions (see below).
4. The Applicant requested a paper track (i.e. on the basis of the written submissions of the parties).
5. Directions were issued by the Tribunal dated 5 December 2018.
6. The Tribunal proceeded to determine the Application without an inspection as photographs had been supplied by the Applicant and it was assumed that the urgent repair work had now taken place.

The relevant lease provisions

7. The Tribunal was provided with a copy of the Lease with the Tenant's name redacted. It is assumed that the remaining leases are similar in all material respects. The Lease is dated 17 March 2004 and is made between Leslie James Cantlay and Christine Ann Barrett (Landlords) (1), Derwent Court Management Company Ltd (Management Company) (2) and a Tenant (3). In consideration of a premium and the payment of a ground rent and the service charge, the Lease grants the Property to the Tenant for a period of 999 years from 1 September 2002.

8. Clause 6 of the Lease states the Management Company's Covenants.

6.1 *“To repair and maintain in good repair and conditionthe exterior of all buildings.... and the roof ...”*

9. The Tenant covenants to pay the service charge which shall mean the amounts properly certified in according with provisions of Clause 6.8

10. The mechanism for the payment of the service charge is found in the Fourth Schedule. Paragraph 2 states:

‘2.1. To pay the yearly Service Charge which shall for the year ending on 31 December ensuing after the date hereof be the sum of £1,000 and in respect of each subsequent year such sum as the Management Company or its duly authorised agent shall in respect of any given year by notice in writing served on the Tenant in that behalf specify as the amount of the Service Charge for that year from 1st day of January in each year calculated in accordance with the provisions of Sixth Schedule....

The Applicant's submissions

11. The Applicant administers to the management of the Property and uses Watson Property Management to carry out the management. In October 2018 a contractor was asked to commence works on the clock tower following water ingress.

12. The Applicant duly informed all the leaseholders on 17 October 2018 of the planned scope of the required works. Works started whilst dispensation was being sought.

13. The application was made on 21 November 2018 when it was stated that works were needed to prevent further water ingress to the clock tower. Scaffolding to all sides of the clock tower was required as well as isolated timber repairs and filling to the required areas and lead repair to the split leadwork and decoration. These works had been started due to the nature of the works as they were deemed urgent to prevent further damage to the fabric of the buildings.

14. No consultation had been carried out due to the urgency of the works, although all leaseholders were aware that these works had started and the reasons, they are started without any consultation period.

15. Since the application, it was found that further works were necessary to stop water ingress as detailed in the copy e-mail dated 7 December 2018.

16. The Tribunal notes that there have been no representations from the respondents.

The Tribunal's Determination

17. The Tribunal was provided with convincing evidence that the work was urgent, given the ingress of water and the advent of winter.
18. It is not the concern of the Tribunal, in any case, as to whether the cost was reasonably incurred. The Respondents retain the right to challenge the cost by making an application under section 27A of the Act at a later date. The question before the Tribunal is whether it is reasonable, in the circumstances of the case to dispense with the consultation requirements. The Tribunal therefore determines that it is just and equitable that dispensation is granted from the consultation requirements contained in section 20 of the Act and the associated regulations requested by the Application.
19. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

A J Rawlence MRICS – Tribunal Judge.
23 April 2019

Annexe A

Schedule of Respondents

LEASEHOLDERS – DERWENT COURT

Leaseholder
Mr C Burton
Mr and Mrs J Tutton
Miss K Vollum
Mr O E Colling
Mr and Mrs M Stephenson
Mr and Mrs M A Clancy
Mr and Mrs P Ryan
Mr and Mrs Swallow