



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

Case Reference	:	BIR/00CU/LDC/2019/0009
Property	:	Bridge Lofts, 3 Leicester St., Walsall, WS1 1PT
Applicant	:	Bridge Lofts RTM Company Limited
Representative	:	Mark Northing (Director of RTM Co.)
Respondent	:	The Leaseholders listed in the Schedule (1) Rafaat Gendy (2)
Type of Application	:	An application to dispense with the consultation requirements provided by s.20 of the Landlord and Tenant Act 1985 ('the Act') under s.20ZA of the Act.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman) R. Bryant-Pearson FRICS
Date of Hearing	:	Paper determination.
Date of Decision	:	7 November 2019

DECISION

Introduction

- 1 The RTM Company (“the Applicant”) applied to the First-tier Tribunal (Property Chamber) (FTT) on 18th September 2019 for an order to dispense with the consultation requirements in section 20 of the Landlord and Tenant Act 1985. The section requires a landlord to consult tenants before placing a contract to undertake any 'qualifying works' that would cost each tenant more than £250 and there are Regulations setting out a timetable and procedure to be followed for consultation.
- 2 However, the Act envisages that there may be occasions where for various reasons a landlord may be unable to consult, for example in cases of emergency, and there is provision in section 20ZA for a landlord to apply to the FTT for 'dispensation' with the consultation requirements. An application can be made before or after works are carried out.
- 3 In this case, the Applicant applied for dispensation on the ground that works needed to be undertaken urgently. The respondents are the tenants.
- 4 The Applicant's representative, Mr Northing, advised that the roof was in poor repair and there was water ingress to the communal areas and interiors of Flats 7 and 10. Furthermore, Walsall M.B.C. had written to the Applicants requesting urgent repairs to the Bridge Street frontage of the building, as part of the stone facade had fallen from the second floor onto the pavement with a consequent risk to public safety.
- 5 Mr Northing provided builders' estimates for the roof repairs of £3,550 from 'Your Local Solutions' and £1,550 from another contractor whose name did not appear on the copy sent to the Tribunal. In respect of the stonework, a copy email was provided from Midland Masonry quoting a daily rate of £1,140 plus VAT to supply a cherry picker to carry out a survey and an ongoing quote of £740 per day to undertake any work found necessary.
- 6 Mr Northing advised that most of the tenants had agreed to the work being carried out.

Facts Found

- 7 The Tribunal contacted the tenants and received replies from eight confirming that they had no objection. No replies were received from the tenants of Flats 2 (Ritesh Kumar Tuli), Flat 4 (Norman Price) or Rafaat Gendy, but Tribunal Directions Order No.2 stated that lack of reply would be treated as consent to the application. No objections were received and accordingly all parties are treated as having agreed to the proposed works.
- 8 The Tribunal inspected the exterior of the property on 31st October 2019. The Applicant was aware of the Tribunal visit but no-one attended other than the Tribunal members, who were only able to inspect the elevations of the Leicester Street and Bridge Street frontages.
- 9 According to plans provided with the sample Lease (Flat 2 dated 15th August 2005), the property comprises commercial units on the ground floor, four flats on the first floor, four on the second floor and two on the third.
- 10 The Tribunal noted defective stonework at eaves level to the Bridge Street elevation but was unable to see most of the roof from ground level.

11 The Tribunal was unable to determine whether the work proposed by the Applicant had been undertaken but assumed it had, as the documents submitted referred to a safety cordon around the building at pavement level which was not there at the time of inspection and a copy bill was provided for a fee charged by Midland Masonry for the inspection.

Relevant Law

12 The Applicant provided the Tribunal with the lease of Flat 2 and the others are assumed to be in similar form. It had been granted for 125 years from 1st April 2005 subject to a ground rent and service charge.

13 Schedule 7 clause 7.3 of the Lease requires the Landlord (or in this case the RTM company) to keep the common parts in repair. The cost is subject to re-imburement by the tenants by a service charge detailed in Schedule 5.

14 The costs of repairing the roof and undertaking masonry repairs are service charge items within the terms of the lease and accordingly the consultation provisions in s.20 of the Landlord and Tenant Act 1985 apply, as they exceed the statutory £250 threshold below which no consultation would be required.

15 The dispensation provision in section 20ZA of the Act states:
'Where an application is made to a leasehold valuation tribunal (a jurisdiction transferred to the FTT) 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.' (Our bracket and italics).

16 Furthermore, there has been case law on the subject in the Supreme Court, *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14, which establishes the matters to be taken into account by a Tribunal when considering an application such as this.

Submissions

17 Mr Northing stated in the application that the works were necessary.

18 No objections were received from other parties.

Decision

19 The Tribunal reached its decision based on the Application and quotations provided by the Applicant.

20 The approach taken by the Tribunal when considering an application for dispensation is set out in the Supreme Court's judgment in *Daejan* above. In summary, this is as follows:

1 The Tribunal should identify the extent to which tenants would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;

2 No distinction should be drawn between 'a serious failing' and 'technical error or minor or excusable oversight' save in relation to the prejudice it causes;

- 3 The financial consequences to the landlord of not granting a dispensation are not relevant factors for the Tribunal to considering in exercising its discretion under section 20ZA and
- 4 The nature of the landlord is not relevant.
- 21 The Tribunal has power to grant dispensation on such terms and conditions as it thinks fit, provided any terms and conditions are appropriate in their nature and effect.
- 22 The Tribunal finds the proposed works are necessary to protect the fabric of the building and the scope of the proposed repairs is within the landlord's repairing liability.
- 23 Applying the tests above and the principles in *Daejan*, the Tribunal finds the tenants would not be prejudiced by granting dispensation of the consultation requirements in the Landlord and Tenant Act 1985 and it would be reasonable to dispense with them.
- 24 The Tribunal emphasises that the purpose of this decision is to consider the application to dispense, not whether the cost would be reasonable or reasonably incurred under section 19 of the Act or anything that may prejudice a later application to decide if service charges would be reasonable under section 27A of the Act if an application were made.

Schedule of Respondents

25	<u>Flat No.</u>	<u>Name</u>
	1	Doug Mponda
	2	Ritesh Kumar Tuli
	3	Tawfiq Ibrahim
	4	Norman Price
	5	Zoe and Richard Edwards
	6	Lee Foster
	7	Darpinder Singh Bajwa
	8	Vik Savjani
	9	Marva Miller
	10	Mark and Sarah Northing
	Ground Floor	Mr Nazir

Application to the Upper Tribunal

- 26 If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.

I.D. Humphries B.Sc.(Est.Man.) FRICS
 Chairman
 First-tier Tribunal Property Chamber (Residential Property)

Date: 7 November 2019