



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

Case Reference : **CAM/33UG/LDC/2019/0034**

Property : **36-42 Patricia Road, Norwich NR1
2PE**

Applicant : **Together Property Management
Limited**

Respondents : **The leaseholders flats 36-42
Patricia Road**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Member : **Judge Wayte**

Date of Decision : **6 January 2020**

DECISION

The Tribunal refuses to make an order for dispensation under section 20ZA of the 1985 Act in relation to the works described in the application.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the retrospective dispensation of any or all of the consultation requirements in respect of works undertaken in April 2019 to deal with squirrels within the roof void. The property concerned is described in the application as a purpose-built block of 4 flats over two floors, constructed circa 1935. (“the Property”). The application is made against the leaseholders in the schedule attached to the application form (“the Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.

The background

3. The application was received on 8 November 2019. Directions were given on 15 November 2019 with the Applicant required to serve the application and directions on the Respondents. The directions contained a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant.
4. On 10 December 2019 the leaseholders of flat 40 wrote to the tribunal objecting “*in the strongest possible terms to this application*”. Their complaint, discussed in more detail below, was essentially that the works should not have been necessary given that they had contributed to roof replacement works the previous year and those works should have resolved the issue.
5. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was not requested and accordingly the application was considered on the papers on 6 January 2020.
6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicant’s case

8. The Applicant provided a statement of case in their hearing bundle which set out the background to the application. In particular, in February 2019 they received reports of squirrels in the loft affecting flat 40. The pest control contractor attended on three occasions at a cost of

£162. However, in order to bait the areas to the loft, scaffolding and the removal of some roof tiles and then re-instatement works were required at an additional cost of £1,238.40. This exceeded the section 20 threshold of £250 per flat, hence this application for retrospective dispensation.

The Respondents' position

9. The only objections received were from the leaseholders of flat 40, as set out above. They confirmed that they had been in discussions with the applicant concerning the state of the roof for over two years. The concerns were squirrels and water ingress into one of the first floor flats. They had hoped that the roof replacement works would deal with the matter once and for all, as they included the fitting of a "*bird comb to the perimeter*" as a more permanent measure to keep out the squirrels. The roof replacement works carried out in 2018 only covered half the roof, meaning that there have been ongoing issues with the remaining roof. Further emails were attached at the time the pest control works were carried out to indicate the leaseholders' concern about the ongoing costs and the need for "*birdcombing*" around the entire building.
10. The Applicant's response to those objections stated that at the time the roof replacement works took place the roof over flat 40 "*was not deemed at the time as requiring full replacement*". As further complaints of water ingress had now been received, there would be a consultation process on the replacement of that side of the roof too.

The Tribunal's decision

10. The Tribunal refuses to make an order for dispensation under section 20ZA of the 1985 Act in respect of the works outlined above.

Reasons for the Tribunal's decision

11. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
12. The leading authority on applications for dispensation is the Supreme Court decision of *Daejan Investments Limited v Benson* [2013] UKSC 14. That case held that the main question for the tribunal when considering how to exercise its jurisdiction is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
13. It seems to the tribunal that the prejudice complained of in this case is that the failure to undertake full roof replacement works in 2018 has

led to avoidable further expenditure in respect of pest control and roof works. The objections from flat 40 also indicate that the Applicant was informed of other solutions in respect of pest control, although no further information is provided. The works also included patch repairs for the benefit of flat 40 and further roof works are currently being consulted upon. It is not clear that the patch repairs were authorised by the leaseholders beforehand, their evidence states that they only learned of the works after they had taken place. In these circumstances the leaseholders would appear to have an arguable case that unreasonable costs have been incurred, which might have been avoided had consultation been carried out. In the circumstances the tribunal does not consider that it is reasonable to dispense with the requirements retrospectively.

14. The effect of this decision is that a maximum of £250 will be recoverable per flat, producing a shortfall for the landlord roughly equivalent to the scaffolding costs or patch repairs.

Application under s.20C Landlord and Tenant Act 1985

15. There was no application for any order under section 20C before the tribunal.

Name: Judge Wayte

Date: 6 January 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case

number), state the grounds of appeal and state the result the party making the application is seeking. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).