



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

Case Reference : **MAN/00FF/LDC/2019/0043**

Property : **3, 4, 8, 9, 10, 12 Thornaby House,
Townend Street, York, YO31 7PZ**

Applicant : **The Council of the City of York**

Respondents : **Mr Eric & Mrs Maureen Wren
Ms Wendy Rushton
Ms Julie Brook
Mr Gregory Schecht & Ms Ana Guerrero-Canet
Mr Dominic Butler**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Judge M J Simpson
Valuer member P Mountain**

Date of Decision : **13 August 2020**

DECISION

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Decision;

The application by The Council of the City of York for dispensation from the consultation requirements of Section 20 Landlord & Tenant Act 1985 in respect of the balcony heads repairs at Thornaby House. Townend Street York is GRANTED unconditionally.

1. By an application dated 29 November 2019 the City Council of York (the “Council”) applies under Section 20ZA(1) for retrospective dispensation from the consultation requirements of Section 20 of Landlord & Tenant Act 1985.
2. The council is the freehold owner of Thornaby House which is a block of 12 flats, six of which (the subjects of this application) are long leasehold. The Leases are in similar form, commencing between 1988 and 2006. Each lease expressly incorporates the relevant terms re repairing obligations, set out in Schedule 6 Housing Act 1985. The Council have the obligation to keep the structure and exterior in repair and the Tenants are required to contribute to the cost thereof.
3. The Tribunal gave Directions, on 19 December, with which the Council has substantially, but not wholly, complied. The respondents have not taken an opportunity to respond, save for Wendy Rushton, the then owner of Nos. 4 & 9, who, by her letter of 11 February 2010, supports the application.
4. The Tribunal has the benefit of, and has considered in detail, the statements, with exhibits, of Rebecca Hardy, acting senior legal officer, (2 statements, both dated 20 January 2010); Wayne Whitley, Building Repairs Team Leader (4 November 2019) and Peter Holt, Housing Team leader (20 November 2019). The exhibits include an undated (but apparently following a Survey inspection on 15 October 2019) Report of James Croft BSc. of Corinthia Ltd, extensive photographic evidence and the invoice of Corinthia Ltd for the repair work.
5. The matter arose as a result of a resident’s report to the Council on 29 September 2019 of a suspected serious fault with the balcony lintels. Mr Whitley inspected on the 11 October and again with Mr Croft on 15 October.
6. Mr Croft reported that:-
“..a crack exists to each head running longitudinally along the underside to the full length around 75mm back from the face.....At its worst , you can see through the crack to the other side suggesting full depth crack propagation and this is most likely to be due to the effects of concrete carbonation and water penetration causing the embedded steel reinforcement to corrode and in doing so, expand, causing a failure mechanism that physically forces the concrete to crack and de-bond from itself.....There is a significant risk of concrete falling from these heads....we promote scaffolding protection and access with immediate effect, temporary propping, followed by specialist concrete repairs.... “

7. The likely cost of the works was such that the consultation requirements of Section 20 of Landlord & Tenant Act 1985 were engaged. In the event the cost was £7650 (inclusive of VAT), one twelfth of which well exceeds £250.
8. Because of the urgency, the work was undertaken without consultation, and was completed between 21 October and 4 November.
9. We are asked to determine if it is reasonable to dispense with the consultation requirements in this case. We stress that we are not determining the reasonableness or payability of the cost of the works. (see: Preliminary paragraph 2. in Directions of 19 December 2019).
10. The Tribunal met on 13 August 2020, by electronic and telephonic means, due to Covid – 19 restrictions.
11. The law is set out in the leading Supreme Court case of *Daejan Investments Ltd. v Benson* [2013]UKSC 14. The issue is primarily whether there has been any real prejudice caused to the tenants. It is for the applicant to show, on the balance of probabilities that there has been no real prejudice.
12. In this case we determine there has not been any real prejudice and therefore we grant the dispensation sought.
13. The urgency was real and not fanciful.
14. The danger of falling concrete is significant.
15. The work needed to be completed within a timescale that inhibited the timescales set out in statute for consultation and response etc.
16. It might be said that once the site had been secured a more leisurely approach was possible, but we note that events took place at the onset of winter and the damage and consequent danger was induced by adverse weather - water penetration. A pause to consult can only have extended the scaffolding costs.
17. None of the Respondents contest the application and one owner of 2 flats, supports it.

18. Some of the Councils approach is not without criticism, and could have led to prejudice.
19. There is no evidence of any alternative estimates being obtained.
20. The work was carried out by the same Company that carried out the survey and provided the diagnostic opinion.
21. There is no evidence that the Council, even informally, kept the respondents informed as to the outcome of the survey, the proposed action and the likely costs.
22. Given, however, that the works clearly needed to be undertaken, and about which the Council had no choice, we do not see how matters would or could have been dealt with in a significantly different way even if the consultation procedures had been followed. The only issue, in fact, would be whether the consultation would or could have influenced the costs of the works.
23. Any such prejudice can be rectified by a S27 application if the respondents feel aggrieved. The report and the extensive photographic evidence means that an 'after the event' estimate of costs could still be obtained, and their ability to challenge the cost (about which we again stress we express no opinion, either encouraging or discouraging any such application) is uninhibited.

Tribunal Judge M Simpson
13 August 2020