



FIRST - TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case References : **BIR/00CT/LDC/2021/0002**

Property : **Chadwick House, Eveson Court
456 Station Road, Dorridge,
Solihull, West Midlands
B93 8EX**

Applicant : **Evesons Management Company Limited**

**Applicant's
Representative** : **Jobsons Solicitors**

Respondent : **Leaseholders of Chadwick Court**

Applications : **Application for the dispensation of all or
any consultation requirements provided for
by s20 Landlord and Tenant Act 1985**

Date of Hearing : **15 June and 26 July 2021**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr I Humphries FRICS**

Date of Decision : **28 July 2021**

DECISION

- 1. The Tribunal grants dispensation for the works described in the application pursuant to s20ZA Landlord and Tenant Act 1985**
- 2. The Applicant shall serve this Decision on all Leaseholders and provide evidence of service within 14 days of the date this Decision.**

Introduction and Background

1. This is an application for dispensation from the statutory consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (the 1985 Act) and the Service Charges (Consultation Requirements)(England) Regulations 2003 (the 2003 Regulations) in relation to proposed qualifying works to Chadwick House Eveson Court (the Subject Property).
2. The Applicant is the management company for the subject property pursuant to the lease, the terms of which are not in dispute. The Tribunal was shown a copy of a lease made 4 January 2017 of Apartment 8 Chadwick House. By the terms of the lease, the Applicant is appointed the Manager of the Development with responsibility for *“the supply of services to the Development for which the leaseholder will pay the Tenant’s Proportion of the Maintenance Expenses”*.
3. The Respondents are the leaseholders of the property. The proposed qualifying works are the reroofing of the three blocks comprising the subject property. At the time of the application made 12 February 2021 the Applicant had completed some of the statutory consultation requirements. It had served notices of intention to carry out works and had obtained quotations, but it seeks dispensation from the further statutory requirements. The reason for the application according to the Applicant is that the works are urgent because failure of the flat roofs is resulting in the ingress of water rendering some flats uninhabitable.
4. By directions of the Tribunal of 19 April 2021 the Tribunal directed a hearing with parties attending to determine the matter. The Tribunal was convened to hear the matter on 15 June 2021 by video conference. At the hearing the

Applicant was unable to present evidence of the costs of works although they had already been completed having regard to the urgency of the situation. The matter was adjourned in order to enable the Applicant to present its evidence of the costs of the works. The Tribunal reconvened on 26 July 2021 without the parties but with the benefit of the Applicant's further evidence in order to conclude its determination of the matter.

5. The Tribunal had decided that an oral hearing was appropriate because of an objection served by Citizen Housing who are leaseholders of six apartments in Tanworth House, a neighbouring block on the development. It contended that the proposed works were in respect of roofs affecting its properties. In the event, at the hearing a representative of Citizen Housing attended to concede that the application did not relate to their properties. He took no further part in the proceedings. Other leaseholders did not serve any objections and no other Respondents appeared at the hearing on 15 June 2021.
6. On considering the application by the Tribunal, the Applicants representative was not able to fully answer questions relating to the materials, specification and supervision of the works that had been undertaken nor provide evidence that at the time of the hearing there was no objection from the leaseholders and the Tribunal gave further directions for the service of evidence.
7. Charlotte Collins, a solicitor with Jobsons Solicitors Limited who represent the Applicant, served a statement dated 21st June 2021 supported by a statement of truth. In her evidence Miss Collins confirmed that all leaseholders, tenants and residents affected by the works were served with this application and no objections had been received by her nor by the directors of the freeholder of the Subject Property or the Applicant.
8. The Tribunal is satisfied that the leaseholders were properly notified of the application for dispensation and no objections were served. The issue for the Tribunal was whether or not it was reasonable to dispense with the s20 consultation requirements.

The Subject Property and the relevant works.

9. The Tribunal was unable to inspect Chadwick House by reason of the current restrictions. The relevant works the subject of this application are described in the quotations supplied by two contractors, Northside Roofing Developments, who were appointed to undertake the works and Midland Flat Roofing.
10. Both contractors identified that existing waterproofing to three flat roofs forming part of the otherwise pitched roof of Chadwick Court had exceeded its life expectancy. Using unchallenged information supplied by Midland Roofing, the Tribunal is satisfied the waterproofing was pulling away from the abutment walls, small splits and holes had appeared and because the waterproofing was a single thin layer leaks had occurred.
11. The application stated the roofs of the three blocks comprising Chadwick House needed urgent replacement due to water ingress which rendered certain flats uninhabitable.
12. In support of the application for dispensation the Applicant explained the reason for dispensation from normal consultation requirements was that the gradual deterioration had accelerated such that there was severe water ingress. Immediate repair work was required because patch repairs caused water to enter elsewhere.
13. The two quotations obtained by the Applicant were adduced and annexed to the application.
14. The work required as appears from the estimate submitted by Northside Roofing Developments Limited involved remedial work to three flat roofs, as follows,
 - a. Erect scaffolding to allow safe working access
 - b. Clean roof of all detritus

- c. Supply and fit 12mm marine plywood sheets to all surface areas, mechanically fixed by means of helix screw and felt roof all areas using an IKO torch on system with a 10 year written guarantee
15. The Applicant had initiated a consultation process in connection with the works after undertaking patching during 2020 but the patches had failed. The Applicant then issued this application seeking dispensation from Schedule 4 of the 2003 Regulations Part 2: the remainder of the period for consideration of the estimates and notification of the award of contract.

The Lease

16. The Second Schedule of the Lease describes the Maintained Property. Clause 1.3 of the Schedule includes “*The structural parts of the Building(s) including the roofs gutters rainwater pipes foundations floors and walls bounding individual Dwellings therein and all external parts of the Building*”.
17. The Maintenance Expenses for which the leaseholder is proportionately responsible are defined as “*moneys actually expended or reserved for periodical expenditure by or on behalf of the manager of the Landlord at all times during the Term in carrying out the obligations specified in the Sixth Schedule*”.
18. Part II of the Sixth Schedule describes “Services attributable to the Block” (meaning the Building of which the Demised Premises forms part). Clause 14.2 describes services relating to the structure as “*To keep the interior and exterior walls and ceilings and floors of the Block and the whole structure roof foundations and main drains boundary walls and fences of the Blockin good repair and condition*”.

The Statutory Framework

19. S20(1) of the Act limits the relevant contributions of tenants unless the consultation requirements have been either:
- a. Complied with in relation to the works or agreement, or

- b. Dispensed with in relation to the works or agreement by (or an appeal from) the appropriate Tribunal

And subsection 3 provides that s20 applies to qualifying works if the relevant costs in carrying out the works exceed an appropriate amount.

20. S27ZA of the Act provides in so far as relevant:

“(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 dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises,

21. By regulation 6 of Service Charge (Consultation Requirements)(England) Regulations the appropriate amount (as referred to in s20 of the Act) is an amount which results in the relevant annual contribution of any tenant being more than £250.00.

The Decision

22. In *Aster Communities v Chapman & Others [2021] EWCA Civ 660*, Lord Justice Newey referred to the Supreme Court Decision in *Daejan Properties Limited v Benson [2013] UKSC 14* and the decision of Lord Neuberger when directing how to decide applications for dispensation in these terms: *“The main, indeed normally, the sole question” when considering whether to dispense with consultation requirements was whether there was “real prejudice to the tenants flowing from the landlord’s breach of the requirements” (paragraph 50). Lord Neuberger said in paragraphs 44 and 45: “Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT [i.e. the leasehold valuation Tribunal] should focus when entertaining an application by a landlord under [section 20ZA\(1\)](#) must be the extent, if any, to*

which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.

45 Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be—ie as if the requirements had been complied with."

23. The Tribunal respectfully considers that the decision of Lord Justice Newey applying the decision of Lord Neuberger in *Daejan Properties v Benson* is that there is a presumption that dispensation will be given (on terms if considered appropriate) unless the leaseholders are likely to suffer prejudice.

24. In this case the leaseholders have not objected to the work required which the Tribunal is satisfied is urgent having regard to the risk of exacerbation caused by continued ingress of rain water which has already rendered apartments uninhabitable.

25. The Tribunal considered the work done, materials supplied and work supervision delivered by the selected contractor and is satisfied it is reasonable. No prejudice to the leaseholders is alleged nor can the Tribunal identify any after considering the Applicant's case.

26. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.

27. 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

28. 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.

Tribunal Judge P J Ellis