



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

Case Reference : **MAN/00BQ/LDC/2020/0050**

HMCTS code : **P:PAPERREMOTE**
(audio,video,paper)

Property : **Norden Lodge, Clay Lane, Rochdale OL11 5AS**

Applicant : **Norden Lodge Management Company Limited**
Applicant's : **Homestead CSL**
Representative

Respondents : **The various Respondents referred to in Annex 1.**

Type of Application : **Landlord and Tenant Act 1985 – s 20ZA**

Tribunal Members : **Judge J.M.Going**
J.Faulkner FRICS

Date of decision : **17 August 2021**

DECISION

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Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face- to- face hearing was not held because no one requested the same, it was not necessary nor practicable, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in the Application, those supplied with it, and Applicant’s bundle, all of which the Tribunal noted and considered.

The Decision

Those parts of the statutory consultation requirements relating to the works which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 16 November 2020 (“the Application”) the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of urgent repairs to parts of the roof (“the works”) serving the various apartments at the property (“Norden Lodge”).
2. The Tribunal issued Directions, which were later repeated after it became apparent that possibly not all the parties had been served properly.
3. The Applicant, through its representative, Homestead CSL (“Homestead”) provided written submissions and, as part of the Directions, was mandated to send copies to each Respondent.
4. None of the Respondents has indicated to the Tribunal any objection to the Application, and none of the parties have requested a hearing.

The facts and background to the Application

5. The Tribunal has not inspected Norden Lodge but understands that it is a purpose built 3 storey residential block consisting of 18 apartments constructed in 2006. It apparent from photographs and Google Street View that it has a complicated, in part pitched and in part flat, roof with various dormer windows.
6. It is further understood that each Respondent owns an apartment within Norden Lodge and is due to pay an equal percentage of the costs of the upkeep of its common parts and common services, including the roof.

7. The Applicant, through Homestead, has provided a bundle of documents including the Application, a sample lease, copies of various emails sent to the Applicant's directors, a letter to the Respondents, together with various emails relating to and reports on the roof, which include photographs.
8. None of the evidence has been disputed.
9. There has been a history of leaks into the top floor properties at Norden Lodge. Initially these were addressed individually.
10. Homestead employed Skeer Chartered Building Consultancy, accredited with RICS, ("Skeer") to advise and assist with the commissioning of appropriate works.
11. A moisture mapping survey was undertaken in August 2020
12. 3 of the top floor flats started to suffer severe leaks, such that 2 tenants had to move out.
13. Surveys identified that major work was required to the dormers. The local council which had been contacted was insistent that works should be carried out immediately, and legal action was threatened.
14. A progress report from Skeer on 28 September 2020, with photographs, identified various defects in construction.
15. Because of the severity of the leaks and the urgency, the necessary remedial works were commissioned on 8 October 2020. The costs for the works having been quoted at £21,865.52 plus VAT i.e. £26,238.62, equating to £1457.71 per property/flat owner.
16. The Application, made on 16 November 2020, confirmed (inter alia) that all the Respondents had been informed of the reason for the dispensation request in a standard letter, a copy of which was included with the papers.

The Law

17. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.
18. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to: –
 - give written notice of its intention to carry out qualifying works, invite leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the work should be sought;

- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, if that is not the person who submitted the lowest estimate.

19. Section 20ZA(1) states that: –

“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... the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

20. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements which are part and parcel of a network of provisions, is to give practical support is to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation is not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord’s failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenant’s case;

- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenant's reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

21. The Tribunal began with a general review of the papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).
22. None of the parties requested an oral hearing and having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. Although the parties are not legally represented, the issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.
23. Having carefully considered the evidence before it, and using its own knowledge and experience, the Tribunal concluded as follows.
24. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
25. The Application does not concern the issue of whether or not service charges will be reasonable or payable.
26. Applying the principles set out in *Daejan* the Tribunal has had to consider whether there was any prejudice that may have arisen out of the conduct of the Applicant, and whether it is reasonable for it grant dispensation.
27. The Tribunal is satisfied that Homestead communicated with all of the Respondents after the full extent of the problems with the roof became apparent, and that there have since been ample opportunities for each of the Respondents to make observations.
28. The Tribunal, in the absence of any written objections from any of the Respondents and having regard to the steps that have been taken, has concluded that the Respondents will not be prejudiced by dispensation being granted.
29. It is clear that the circumstances had the potential to severely impact on the health, safety, utility and comfort of the Respondents and their visitors.

30. The Applicant has made out a compelling case that the works were necessary, appropriate and urgent, not just on health and safety grounds, but also in order to mitigate potential losses to the Respondents and in respect of any insurance claim, as well to forestall threatened legal action.
31. The Tribunal is satisfied that to insist on the completion of the consultation requirements now would be otiose.
32. For all these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.
33. It is however emphasised that nothing in this decision should be taken as an indication that the Tribunal considers that any service charge costs resulting from the works will be reasonable or indeed payable. The Respondents retain the right to refer such matters to the Tribunal under section 27A of the Landlord and Tenant Act 1985 at a later date, should they feel it appropriate.

JM Going
Tribunal judge
17 August 2021

Annex 1

Leaseholders

Flat 1 Norden Lodge – Mr M. Taylor

Flat 2 Norden Lodge – Mr & Mrs D. Woosey

Flat 3 Norden Lodge – Mrs M. Slattery

Flat 4 Norden Lodge – Mr & Mrs Blundell

Flat 5 Norden Lodge – Ms L. Mallalieu

Flat 6 Norden Lodge – Mr C. Mellor, Ms V. Crood & Mr L. Taylor

Flat 7 Norden Lodge – Ms A. Chesters

Flat 8 Norden Lodge – Miss M. Taylor & Mr D. Hogan

Flat 9 Norden Lodge – Mr W. Ahmad

Flat 10 Norden Lodge – Mr C. Heaton

Flat 11 Norden Lodge – Mr R. Turner

Flat 12 Norden Lodge – Taylor Engineering & Plastics Ltd

Flat 13 Norden Lodge – Mr D Sunderland

Flat 14 Norden Lodge – Mr P. Sanderson

Flat 15 Norden Lodge – Mr D Evans

Flat 16 Norden Lodge – Mrs N. Brown

Flat 17 & 18 Norden Lodge – Mr N. Mumtaz