



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

Case reference : **MAN/30UF/LDC/2020/0002**

Property : **29 St Annes Road West, Lytham St
Annes, Lancashire, FY8 1SB**

Applicant : **West Beach House Management
Company Ltd**

Representative :

Respondents : **The Estate of Mr P A Stephens
Mr & Mrs K Woodcock
Mr A. Knight
Mr & Mrs N. Charlesworth
Ms J. Martin
Mrs S. Sampath
Mr & Mrs A. Ashton
Mr & Mrs M. Watson**

Representative :

Type of application : **Dispensation with Consultation
Requirements under section 20ZA
Landlord and Tenant Act 1985.
Judge J White**

**Tribunal
member(s)** : **Mr H Thomas FRICS FCABE MEWI
(valuer)
Paper (P)**

Venue : **Northern Residential Property First-tier
Tribunal, 1 floor, Piccadilly Exchange, 2
Piccadilly Plaza, Manchester, M1 4AH**

Date of decision : **11 May 2021**

DECISION

The Decision

- (i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act

1985 in respect of the application of Stormdry masonry protection cream to westerly and northerly gable elevations and carry out any patch repairs found as set out in the Report of RTC.

(ii) In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Property is a Victorian style house converted into 8 flats in 2001. It has a stairwell and a lift . It has a lower ground floor at the rear, with a ground, first and second floor level.
3. In an earlier application to the Tribunal (MAN/30/UF/LDC/2020/0002) the Applicant requested and obtained dispensation from consultation in relation to qualifying works to erect scaffolding, replace defective guttering, replace rainwater pipes with 4-inch ones, inspect, carry out any remedial work to the roof slates and felt, and inspect brickwork . A Section 20 Notice 1 had been sent on 19/12/19. A Notice 2 was due to follow and works to commence on 14 January 2019.
4. This application was made on 3 November 2020. It concerns work to remedy penetrating dampness by the application of Storm Dry masonry protection cream to the westerly and northerly gable elevations.
5. Works were said to be urgent due to the need to prevent ingress of water caused by porous masonry into apartments 5 and 7.
6. On 4 January 2021, the Tribunal issued Directions. In accordance with those directions the Applicant submitted a bundle of documents to the Tribunal and each Leaseholder.
7. No objections or submissions were received from any of the Leaseholders.
8. The Directions stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected. The Tribunal convened on 11 May 2021 without the parties to determine the application. It decided that there was enough evidence to determine the application without the need for an inspection or oral hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective.

The Evidence

9. The Applicants case is set out in a Statement of Case with supporting evidence, including copies of the Leases. On 28 October 2020, a Section 20 Notice “merging parts 1, 2 and 3 of the procedure into one notice” was issued to all leaseholders. This included two quotes of £8950 + VAT from Guaranteed Maintenance and £9520 +VAT from RTC. The work was to remedy the risk of water ingress through porous brickwork. It consisted of Storm Dry masonry protection cream to the westerly and northerly gable elevations, and erecting scaffolding. RTC was selected “as “a trusted contractor specialising in damp proofing who will complete work to a high standard” No written observations or objections were received. [21].
10. The Respondents have not made any submissions to the Tribunal as part of this Application.

The Law

11. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) Where an application is made to a Leasehold Valuation 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.

12. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson et al* [2013] UKSC 14. In summary the Supreme Court noted the following
 - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements.
 - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. The Tribunal has power to impose a condition that the landlord pays the tenants’ reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord’s application under section 20ZA (1).

- f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some “relevant” prejudice that they would or might have suffered is on the tenants.
- g. The court considered that “relevant” prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the noncompliance has in that sense caused prejudice to the tenant.
- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

The Leases

13. In accordance with Clause 7.1 that the Management Company covenants with the tenant to “*provide and perform the Estate Services and the Building Services*”, the Sixth Schedule Part 1 Clause 1 provides that, the Building Services include “*to maintain, repair and where necessary renew 1.1 The main structure of the building*”. West Beach House Management Company’s articles of association objectives 3 A are to “*take over and maintain in good condition the structures walls...*”

The Determination

Findings

14. The report by RTC sets out that they are a long established damp specialist company employing qualified surveyors and technicians. They were instructed to carry out a non-destructive inspection to determine the presence of dampness to external walls of apartments 5 and 7 and to provide a quotation for the application of external water repellent. The inspection took place on 24 August 2020 by a specialist preservation surveyor Jamie Willacy who holds suitable qualifications (CSTDB CSSW AIMMM). RTC is also a member of the Property Care Association.

15. The inspection revealed that there were no signs of any significant obvious visual defect and that:-

“it is likely that the internal dampness is the result of persistent rainwater penetration through the solid wall. The exposed location and westerly direction of the elevation means it will be subjected to severe wind driven rain.

We understand previous testing using Karsten Tube method indicated the brickwork is porous.

In addition to ongoing ingress there is likely to be hygroscopic salt contamination which will continue to attract atmospheric moisture, particularly when high humidity is present [275]

...Testing has determined the brickwork is porous and there is internal evidence of penetrating dampness where we have inspected apartments 5 and 7 so the application of a high-performance masonry water repellent is recommended.

.. We recommend the application of Stormdry masonry water repellent. Stormdry is a deeply penetrating water repellent cream” [277]

16. They propose the following works:-

- a. Replaster walls internally incorporating renderguard salt retardant additive and/or apply a specialist waterproof dry-lining or membrane system depending on site conditions. Replaster.
- b. Application of Stormdry masonry protection cream to westerly and northerly gable elevations and carry out any patch repairs found.

17. The external works are necessary and urgent. Whilst the internal works are clearly necessary and it would be usual for the same contractor to undertake those works, of the repairs proposed only the external work is the subject of this application. This is presumably because those works are more urgent.

Reasons

18. The external works are clearly Qualifying Works triggering consultation requirements in accordance with S20ZA (2) of the Act. The amount of £11,425 (inclusive of VAT) exceeds £250 for any qualifying tenant as set out in the Leases. The amount each leaseholder is liable to pay varies between 9.5% and 14%.

19. The Consultation requirements provides important safeguards for leaseholders and should not be dispensed with unless the Tribunal is satisfied that it is reasonable to dispense with the requirements as set out in the case of *Daejan* set out above.

20. No lessee has objected to the application and no prejudice as referred to in the *Daejan* case above has been identified. The works are urgent and any delay is likely to result in more extensive repairs being necessary internally and cause further water penetration into the Property. They have chosen a reputable specialist contractor who used a suitably

qualified expert to inspect the Property. The company is a member of the Property Care Association. The Applicant has started the consultation process, thereby giving the tenants an opportunity to make any objection to the nature, extent, and cost of the work. They have limited the application to the urgent external works only.

21. For the reasons set out above the Tribunal grants dispensation from the consultation requirements of S.20 the Act in respect of the Application of Stormdry masonry protection cream to westerly and northerly gable elevations and carry out any patch repairs found as set out in the Report of RTC [267-289].
22. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Judge J White
17 May 2021

RIGHTS OF APPEAL

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.