



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

Case Reference	:	CAM/00KA/LDC/2020/0010
HMCTS code (paper, video, audio)	:	P:PAPERREMOTE
Property	:	39-89 Downs Court, Downs Road, Luton LU1 1QN
Applicant	:	Downs Court Maintenance (Luton) Limited
Applicant's representative	:	P&R Management Services (UK) Ltd
Respondents	:	The leaseholders of the Property (16 flats, Nos. 39-69, and 10 maisonettes, Nos. 71-89)
Type of application	:	For dispensation from consultation requirements - Section 20ZA of the Landlord and Tenant Act 1985
Tribunal members	:	Judge David Wyatt
Date of decision	:	1 July 2020

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary and all issues could be determined on paper.

The documents that I was referred to comprise the following: (a) a statement from the applicant, with enclosures, of five pages; (b) copies of the application form and the case management directions; (c) a specimen lease; and (d) a covering letter from the applicant's representative. I have noted the contents and my decision is below.

The Tribunal's decision

The Tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in relation to the works described in the application form and the statement from the Applicant.

Reasons for the Tribunal's decision

The application

1. On behalf of Downs Court Maintenance (Luton) Limited, the managing agent applied for retrospective dispensation from the statutory consultation requirements in respect of works to replace the communal flat roof above Nos. 63, 65 and 67 at the Property.
2. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003, are:
 - (i) complied with; or
 - (ii) dispensed with by the tribunal.
3. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
4. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.**

The Property and the parties

5. The Property is described by the Applicant as a development comprised of 16 flats, Nos. 39-69, and 10 maisonettes, Nos. 71-89, each contributing equal service charge proportions.
6. The application was made against the leaseholders of those 26 properties (the “**Respondents**”).

7. The Applicant is the management company under the relevant leases. The specimen lease produced by the Applicant includes a covenant by the Applicant to keep the main roof of the block in good order and condition (clause 10) and indicates that it was anticipated that leaseholders would take shares in the Applicant.

Procedural history

8. Case management directions were given on 24 April 2020, requiring the Applicant to serve on the Respondents copies of the application form, with enclosures, and the directions.
9. The Applicant has through its representative confirmed to the tribunal that the directions were received electronically from the tribunal on 24 April 2020 and sent to each Respondent on the same day.
10. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 27 May 2020.
11. The directions further provided that this matter would be determined during the seven days commencing on 22 June 2020 based on the documents, without a hearing, unless any party requested an oral hearing.
12. No leaseholder has responded and no party has requested an oral hearing. The determination has been delayed because the Applicant needed more time to produce the requisite bundle and then asked the tribunal to proceed using the separate documents it supplied electronically instead, as summarised above.
13. Accordingly, this application has been determined based on the documents produced by the Applicant. On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant's case

14. In the statement provided with the application form (as served on the Respondents), the Applicant said that:
 - (i) reserves had been collected towards anticipated roof repair works, but a section of the flat roof was damaged by weather conditions on Sunday, 29 March 2020;

- (ii) insurers were notified on Monday, 30 March 2020;
 - (iii) the Applicant sent out notices of intention (the first step under the consultation requirements) to leaseholders on 3 April 2020 in respect of the potential need to replace the roof;
 - (iv) after consulting several roofing contractors, the Applicant understood that it was not practical to patch the roof and there was a high risk of damaged brickwork and roof material falling into the car park below;
 - (v) to avoid the risk of further damage from water penetration into the properties below the damaged roof, and these other risks, it was necessary to replace the roof without waiting to continue with the consultation process;
 - (vi) the Applicant obtained quotations and selected a contractor taking into account their demeanour and ability to attend to the work in a timely manner, appointing them on 9 April 2020 on the basis that they would carry out the works urgently. By 15 April 2020, they had completed the works;
 - (vii) on 14 April 2020, the insurers gave notice of their intention to refuse the claim, stating that the roof was in poor condition and the wind was not strong enough at the relevant time to constitute storm damage, although the Applicant is contesting this; and
 - (viii) the total cost of the works is expected to be in the region of £15,000; in view of the refusal from the insurers, the management company may seek to recover these costs from leaseholders through the service charge.
15. The documents which accompanied the application form also include:
- (i) photographs showing large areas of missing roof covering, exposed old boarding and mortar missing below the angled bricks at the top level of the building beside the roof;
 - (ii) an e-mail quotation from the selected contractor at £15,000 for a concise specified scope of work, including scaffolding, removing all debris, replacing the roof and repairing the brick work; and
 - (iii) e-mails from one other contractor indicating a lower price (£10,600) which had been produced following requests for clarification of earlier e-mails and does not on its face include the same fuller scope of work, such as repairing the brick work and

other items, specified in the quotation from the selected contractor.

The Respondents' position

16. As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
17. Neither the Applicant nor the tribunal has received any response or statement of case opposing the application, or comments on the Applicant's statement as enclosed with the application form. In the circumstances, the tribunal concluded that the application was unopposed.

The Tribunal's decision

18. The application was not opposed by the Respondents, who have not challenged the information provided by the Applicant, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, or asked for or provided any other information.
19. On the information provided, it was reasonable to proceed with these roof replacement works without delay to avoid the risk of potentially much greater costs of water ingress into the properties below, even apart from any risk of injury from bricks or other materials falling from the roof.
20. Accordingly, in the circumstances set out in this decision, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the relevant works.
21. The tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the works described in the application form and the statement from the Applicant.
22. There was no application to the tribunal for any order under section 20C of the 1985 Act.
23. The Applicant management company shall be responsible for serving a copy of this decision on all leaseholders.

Name: Judge David Wyatt

Date: 1 July 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).