



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

Case Reference : **BIR/17UG/LDC/2022/0004**

Property : **New Central Building 2 Station Street Long Eaton Nottingham NG10 1GL**

Applicant : **New Central Building RTM Company Ltd**

Representative : **MVN Block Management Ltd**

Respondents 1 : **The leaseholders of New Central Building**

Respondent 2 : **SF Ground Rents No 15 Ltd**

Type of Application : **An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works.**

Tribunal Members : **V Ward BSc Hons FRICS – Regional Surveyor
Judge C Payne**

Date of Decision : **22 March 2022**

DECISION

Background

- 1) By an application received by the Tribunal on 15 February 2022, the Applicant management company sought urgently dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
- 2) The justification for the application provided by the Applicant was as follows; Urgent works are required to the roof to prevent pigeon infestation and also to repair damaged areas to prevent water ingress. In addition, repointing is required to the gable and verges. Further details were provided on the application form.
- 3) By Directions dated 18 February 2022, the Applicant was instructed to send to the Tribunal and the Respondents, the following documents:
 - a) A copy of the directions dated 18 February 2022;
 - b) A copy of the application form;
 - c) A statement explaining the purpose of the application and the reason why dispensation was sought;
 - d) Copies of any invoices and quotations relating to the works;
 - e) Any relevant documents including reports on the works required and specifications etc;
 - f) If available, relevant photographs.

By the Directions of 18 February 2022, Respondents 1 (the leaseholders of the New Central Building) and also Respondent 2, the Landlord, were instructed, by 11 March 2022, to complete the reply form provided with the Directions, and return it to the Tribunal, with a copy to the Applicant indicating whether:

- They consented to the application (i.e. agreed to dispensation from full consultation)

or, if they opposed the application (in whole or in part) and the reasons why.
- Within their application, the Applicant had indicated that they were content with a paper determination. If any Respondent required an oral hearing they were to indicate accordingly on the reply form.

The Respondents were advised if they failed to return the form, the Tribunal would assume that they did not oppose the dispensation application.

The Submissions of the Parties

The Applicant

- 4) The Applicant's statement explained that the roof at New Central Building had been neglected for years and the lack of repair and maintenance has led to many problems including a major leak in August 2021. Since the Applicant took over the management at the beginning of this year, they had identified urgent works that needed to be started as soon as possible and they were therefore seeking dispensation from the Tribunal to the consultation requirements to carry out the works as soon as possible.
- 5) The works urgently required are to the roof to prevent pigeon infestation in various flats, the clocktower and the loft and also to repair various areas on the pitched roof and replace the flat roof. In addition, the works proposed will repair damage caused by previous water ingress to flats and commercial units and will prevent further issues of that kind. These works include repointing to the gable and verges. Further investigations will also be required to see if capacity is an issue with the downpipe as that may be causing a backup in the valley gutters.
- 6) The Applicant advised that the costs for these works will be far less expensive than the quotes obtained by the previous managing agents. The Applicant understood that the previous quotes were based on drone images and no roofing contractors had actually inspected the roof. Therefore, the quotes produced had been based on replacing the whole roof rather than the Applicant's approach which is to repair, replace and maintain.
- 7) The Applicant had also provided a schedule of the flats and commercial units impacted by the water ingress/roof defects which indicated the issues faced. Eight flats had suffered problems such as leaks, ceilings failing in, dampness and pigeon droppings. There was also pigeon infestation in the roof spaces above some flats. Photos of the damage were also provided.
- 8) A quotation from Leicester Groundwork and Building Services Ltd was exhibited to the Tribunal and the Respondents. This indicated the cost of the works as £60,220.00 including VAT.

The Respondents.

- 9) Owners of eleven flats and one commercial unit had completed the reply forms to the effect that they supported the application for full dispensation. The Tribunal received no objections to the application and there were no requests for an oral hearing.

Hearing and Inspection

- 10) As there have no been no requests for an oral hearing and the Tribunal does not consider there is any necessity for the same, the Tribunal has determined this matter on the basis of the written submissions of the parties and without an inspection of the Property.

The Lease

- 11) The application before the Tribunal relates only to the requested dispensation from the statutory consultation regime in the Act as interpreted by the courts (see below).

The Law

- 12) Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the consultation procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a leaseholder has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as ‘works to a building or any other premises’) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual leaseholder in excess of £250.00.
- 13) Essentially, there are three stages in the consultation procedure, the pre-tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and, in some cases, a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.
- 14) In *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”), the Supreme Court noted the following:
 - a) Prejudice to the tenants from the landlord’s breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20ZA (1).
 - b) The financial consequences to the landlord of not granting 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 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 tenant. It is not appropriate to infer prejudice from a serious failure to consult.

- e) 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 non-compliance has in that sense caused prejudice to the tenant.
 - f) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - g) Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). 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.
 - h) In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
 - i) The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
 - j) 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).
- 15) For the sake of completeness, it may be added that the Tribunal's dispensatory power under section 20ZA of the Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

The Tribunal's Determination

- 16) It is clear to the Tribunal from the submissions made that the works are urgently required to prevent water ingress into the Property, to remove the consequences of pigeon infestation and to prevent any further infestation.
- 17) The Tribunal cannot identify any prejudice (as defined by *Daejan*) that the Respondents may suffer as a result of the failure to consult, nor have any Respondents made any submissions to that effect.

- 18) Accordingly, the Tribunal determines that, on the evidence provided, it is reasonable to dispense with the further consultation requirements of section 20 of the Act. The requested dispensation is, therefore, granted.
- 19) Parties should note that this determination does not prevent any later challenge by any of the Respondent leaseholders under sections 19 and 27(A) of the Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.

Appeal

- 20) A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD