



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

Case Reference : **MAN/00DA/LDC/2021/0050**
HMCTS code : **P:PAPERREMOTE**
(audio,video,paper)

Property : **19 Oakwood Drive, Leeds LS8 2JB**

Applicant : **Long Term Reversions (Torquay) Ltd**

Applicant's Representative : **Inspired Property Management**

Respondents : **The owners the long leasehold interests in 19A and 19B Oakwood Drive.**

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

Tribunal Members : **Judge J.M.Going**
N.J.Swain MRICS FAAV

Date of decision : **30 June 2022**

DECISION

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 9 August 2021 ("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") at the property ("19 Oakwood Drive").
2. The Tribunal issued Directions on 4 February 2022.
3. The Applicant, through its representative, Inspired Property Management ("Inspired"), provided written submissions and, as part of the Directions, was mandated to send copies to each Respondent.
4. Neither Respondent has indicated to the Tribunal any objection to the Application, and none of the parties have requested a hearing.
5. The Tribunal convened on 30 June 2022.

The facts and background to the Application

6. The Tribunal has not inspected 19 Oakwood Drive but understands that it is a stone-built terrace house converted into two flats sharing a communal entrance and lobby and certain facilities at the rear. 19A Oakwood Drive on

the ground floor has two bedrooms and 19B on the first floor has three. It is apparent from Google Street View that the property has pitched roofs and a chimney.

7. It is also understood that each Respondent owns a long leasehold interest (being the balance of a 125-year term) in his or her flat and is due to pay an equal percentage of the Applicant/freeholder's costs of the upkeep of the property's common parts and common services, including the roof.

8. The Applicant, through Inspired, has provided a bundle of documents including the Application, a sample lease, copies of various emails/letters sent to the flat owners relating to the dispensation application together with a copy of a report and quotation from the Homeshield group following a survey undertaken in April 2021.

9. None of the evidence has been disputed.

10. It was explained in the Application that 19B Oakwood Drive was *"suffering from water ingress via the roof. Works are required urgently so that a permanent repair can be completed as soon as possible to prevent damage to the property which would ultimately cause an inconvenience to the leaseholders and would cost more money. The longer the works are postponed the more damage is likely to be caused and we are keen to make the building watertight as soon as possible. Currently, the property suffers from serious water ingress each time it rains"*. Based on ground level investigation, and with the caveat that the specification might change as the works progressed the scope of the necessary remedial works was described as comprising *"1. Patch point chimney where mortar is missing 2. Flaunch top of the chimney as mortar has deteriorated 3. Re-point flashings where mortar is missing 4. Scaffold or cherry picker will be required"* and with an estimated cost of £900 plus VAT.

11. The Application confirmed (inter alia) that each flat owner had been informed of the reason for the dispensation request in a standard letter, a copy of which was later included with the papers.

12. Copies were also provided of the initial notices of the intention to carry out qualifying works as required under the consultation requirements which were sent to the respective flat owners on 16 August 2021.

13. In email sent to the Tribunal on 28 March 2022 it was stated (inter alia) *"Due to the design of the property the only way that the roof could be accessed and surveyed was by scaffolding. These costs alone would exceed the consultation threshold. So the decision was taken to arrange for the scaffolding and the repairs and then apply for the requirements of the consultation to be waived in an attempt to mitigate the damage to 19B Oakwood Drive. The works are now completed and came to £900 (in) total which was covered by sinking fund and resulted in no supplementary charges"*. It was further confirmed *"Inspired received no further correspondence regarding the works after the attached documentation was issued"...* *"I feel that it is also important to mention that since the works have*

been completed both leaseholders in the property at the time the application was made have since sold their property and moved out. Both leaseholders that have since purchased these properties were also provided with the attached documents as part of the LPE pack which is supplied to all new purchases”.

The Law

14. 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.

15. 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.

16. 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.”

17. 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 tenants' 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 to compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

18. 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).

19. 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.

20. Having carefully considered the evidence before it, and using its own knowledge and experience, the Tribunal concluded as follows.

21. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.

22. The Application does not concern the issue of whether or not service charges will be reasonable or payable.

23. 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.

24. The Tribunal is satisfied that Inspired related the problem of the leaking roof and the steps to be taken to mitigate the same, the works, the consultation requirements and the dispensation application to the flat owners,

and that there has been ample opportunity for each Respondent to make observations.

25. The Tribunal, in the absence of any written objections from either Respondent, and having regard to the steps that have been taken, has concluded that the Respondents will not be prejudiced by dispensation being granted.

26. It is clear that the circumstances had the potential to severely impact on the health, safety, utility and comfort of the owners for the time being of the two flats and their visitors.

27. The Applicant has made out a compelling case that the works were necessary, appropriate and urgent.

28. The Tribunal is satisfied that to insist on the completion of the consultation requirements now would be otiose.

29. For all these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Tribunal Judge J Going
30 June 2022