



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

Case Reference : **BIR/17UH/LDC/2022/0029**

Property : **Heathfields Gardens, Buxton, SK17 6TN**

Applicant : **Heathfield (Buxton) Management
Company Limited**

Respondent : **The leaseholders of Nos 2, 19, 20, 21, 22 23
& 24 Heathfield Gardens, Buxton, SK17
6TN**

Type of Application : **To dispense with the statutory
consultation requirements under Section
20ZA of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge Craig Kelly
Thomas Wyn Jones FRICS**

Date of Decision : **10 November 2022**

DECISION

DECISION

1. The Tribunal grants the application for dispensation from statutory consultation in respect of the subject works, namely the installation and commissioning of various pieces of works carried out by The Maintenance Group in the sum of £2,448 concerning rectification works to Apartment 21 of Heathfield gardens concerning downpipe repairs, splashback fittings and associated works (“the Property”).
2. The Applicant should place a copy of this decision together with an explanation of the leaseholder’s appeal rights on its website (if any) within seven days of receipt of this decision and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent position in the common parts of the Property.
3. This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under s27A of the Landlord and Tenant Act 1985 in respect of the reasonableness and/or the cost of the relevant works.

The Facts

4. The Property comprises two purpose-built blocks and a converted school house (“the Estate”). The School House was converted into 6 units across two floors and the gable end of the house required attention as damp and condensation was presenting in Apartment 21 within that converted building.
5. The required works were completed by the Maintenance Group on 5 October 2022 following a recommendation by a surveyor from Earl Kendrick Project and Building Surveying Consultancy that repairs should be carried out promptly due to potential difficulties in the winter months. The Tribunal, however, was not provided with a copy of that report and it is unclear when that was received by the Applicant.
6. Two quotes were obtained in broadly similar substantially the same terms by the Applicant as follows:
 - a. the Maintenance Group in the sum of £2,448 (inc. VAT); and
 - b. Specialist Projects in the sum of £3,953.87 (inc. VAT)
7. Works were carried out by the Applicant through the instruction of the Maintenance Group, which quoted for the works in the following terms:
 - a. To remove the down pipe fully;
 - b. To replace any damages parts and seals;
 - c. To supply and fit new brackets
 - d. To repoint around the down pipe as needed before re-fitting;
 - e. To extend the exit of the downpipe to the drain;
 - f. To fit cover over to prevent splash back;
 - g. To test downpipe after works;
 - h. To scrape out the crack to the stone banding;
 - i. Stich kit the crack;

- j. Re-point as needed;
- k. To tidy up areas of works after completion; and
- l. To remove all waste from site.

("the Works")

The Application

8. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for dispensation from consultation in respect of the Works.
9. The Service Charges (Consultation Requirements) Regulations 2003 ("the Regulations") provide that consultation requirements are triggered if a landlord plans to carry out qualifying works that would result in the contribution of any tenant being required to pay more than £250 in any service charge year. The costs of the Works envisaged in this application exceed that threshold.
10. On 22 September 2022, Regional Surveyor Ward made directions requiring the Applicant to provide copies of the dispensation application, the directions made and further supporting documents as specified in the directions to all leaseholders at the Property. Any leaseholder intending to oppose the application was required to notify the Tribunal of their objections by 19 October 2022. The Tribunal has received no such objections.
11. The directions identified that the Application requested a paper determination, and that the Tribunal agreed with that mode of disposal. The Tribunal directions provided for any interested leaseholder to request an oral hearing. No such request was received.
12. The Applicant is the freeholder of the Estate, acting via its managing agent, Premier Estates Limited. The application for dispensation in respect of the Works was received by the Tribunal is dated 6 September 2022. Although the Application Notice refers to the Notice of Intention for the Works having been sent out to all leaseholders on 6 September 2022, the Notice exhibited with the statements of case is dated 12 September 2022, although that is consistent with the information provided subsequently in the detailed statements of case provided by the Applicant.
13. The application noted that the Works were required to be carried out urgently, given the potential for further damage in the winter months and hence, those works were completed on 5 October 2022. The Works were carried out by the Maintenance Group, instead of with Specialists Projects, which provided a quote for the same works at £3,953.87.

The Respondents' Cases

14. No Respondents have objected to the application. Confirmation was received by the Tribunal on 5 October 2022 that the Respondents had all been provided with a copy of the application paperwork as directed by the Tribunal.

Determination and Reasons

15. Section 20ZA (1) of the Act provides:

*“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 the 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.**” (our emphasis added)*

16. The purpose of s. 20ZA is to permit a landlord to dispense with the consultation requirements imposed by s.20 of the Act if the Tribunal is satisfied that it is reasonable for them to be dispensed with. This is a less onerous test than what previously applied by the County Court in the former version of s.20 as repealed in 2002, which required permitted dispensation only where the court was satisfied that the landlord had acted reasonably.

17. The approach to considering the grant or refusal of an application for dispensation has been set out by the Supreme Court in *Daejan Investments Ltd -v- Benson and others [2013] UKSC 14*. The essence of that decision can be distilled as follows:

- a. the consultation requirements are not an end in themselves, but a means to the end of the protection of tenants in relation to service charges: their purpose is to ensure that tenants are protected from paying for inappropriate works, or from paying more than would be appropriate;
- b. in considering dispensation requests, the tribunal should focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- c. it is neither convenient nor sensible to distinguish between a serious failing and a minor oversight, save in relation to the prejudice it causes;
- d. the financial consequences to the landlord of not granting dispensation are not a relevant factor, and neither is the nature of the landlord;
- e. while the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the tenants: once they 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;
- f. the tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application;
- g. insofar as the tenants will suffer relevant prejudice, the tribunal should, in the absence of some good reason to the contrary, effectively require

the landlord to reduce the amount claimed to compensate the tenants fully for that prejudice;

- h. that conclusion does not enable a landlord to buy its way out of having failed to comply with the consultation requirements, because it will still face significant disadvantages for non-compliance, namely
 - i. it must pay its own costs of making and pursuing an application to the tribunal for a dispensation,
 - ii. it must pay the tenants' reasonable costs of investigating and challenging that application, and
 - iii. it must accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal will adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue.

18. The Upper Tribunal provided guidance in *Jastrzemski -v- Westminster CC [2013] UKUT 0284 (LC)* in the following terms (albeit, it must be remembered, that this is only guidance, nothing in it may fetter to the exercise of the discretion conferred by s.20ZA(1) of the 1985 Act):

- a. whether, and if so to what extent, the tenant would relevantly suffer if unconditional dispensation was granted (the word relevantly in this context refers to a disadvantage that the tenant would not have suffered if the consultation requirements had been fully complied with but which they will suffer if an unconditional dispensation were granted);
- b. the factual burden is on the tenant respondent to identify any relevant prejudice;
- c. once the tenant has shown a creditable case for prejudice, the tribunal should look to the landlord to rebut it, failing which it should, in the absence of a good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice;
- d. it is not sensible or convenient to distinguish between a serious failing and a technical, minor or excusable oversight, save in relation to the prejudice it causes - the gravity of the landlord's failure to comply, the degree of its capability, the nature of the landlord and the financial consequences of its failure to comply are not relevant considerations for the Tribunal *per se* and their relevance will depend upon the prejudice which each such factor causes;
- e. the tribunal may grant dispensation on terms it thinks fit, providing that they are appropriate in their nature and effect, which may include terms as to costs.

19. There is no indication of any potential prejudice to the Respondents as a consequence of the consultation requirements not being followed in this case.
20. The Tribunal accepts that in light of the concerns regarding the works needing to be completed prior to the winter months, that it was reasonable not have completed the extensive consultation process required under the Regulations in respect of the Works and it therefore dispenses with the consultation requirements accordingly on an unconditional basis.
21. Whether the Works have been carried out to a reasonable standard and at reasonable cost are not matters that fall to be determined in this application and nothing in this decision prevents determination of such matters at a later stage in a separate application as appropriate.

Judge Craig Kelly
Dated 10 November 2022

ANNEX- Rights of Appeal

1. If a party wishes to Appeal this decision to the Upper Tribunal (Lands Chamber), then a written application must be made to the First Tier Tribunal at the regional office which has been dealing with the case.
2. Any application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends the written reasons for the decision to the person making the application.
3. 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 consider such reasons and determine whether to allow the application for permission to appeal to proceed, notwithstanding that the 28 day time limit has expired.
4. Any application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. provide the date, the property, and the case number) and set out the grounds of appeal and state the result that the party making the application is seeking.