



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

Case Reference : CHI/21UD/LDC/2023/0006

Property : 67 Church Road, St Leonards On Sea, East
Sussex, TN37 6EE

Applicant : Amy Kolb in her capacity as freeholder

Representative :

Respondents : Amy Kolb
Sian Coakley
Richard Court

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works
section 20ZA of the Landlord and Tenant
Act 1985

Tribunal Member(s) : Judge Tildesley OBE

**Date and Venue of
Hearing** : Determination on Papers

Date of Decision : 20 February 2023

DECISION

The Application

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 19 January 2023.
2. The property is described as a semi-detached Victorian building built circa 1880 of brick construction converted into 3 flats, all self-contained.
3. The Applicant explained that the three leaseholders of the flats are also joint owners of the freehold of the building. The Applicant stated that in effect the three freeholders operated independently. There was no constitution, no company and no deed of trust governing their relationship.
4. The Applicant was seeking dispensation in respect of urgent repairs to the roof. The Applicant had obtained a report from Stuart Radley Associates, Chartered Building Surveyors dated 21 January 2022, who had identified a serious structural problem in the roof.

“Above the rear wall of the building the wall plate supporting the rafters sits on the top of a half brick section of wall. The roof plate has moved outwards due to the weight of the rafters over the years and has only about 10mm of the plate left bearing on the head of the supporting wall. A section of the supporting wall is also damaged and at an angle due to the eccentric loading from the plate. The main roof structure lacks adequate strutting for the purlins and there are no collars to the rafters.

A similar problem is present in the front roof space, although the degree of movement is not as significant. The plate has moved out about 50mm on the head of the supporting brick wall.

The centre valley beam has also been affected by timber decay. The beam can probably be saved if the rot is treated and the beam strengthened, but it would be sensible to address this issue as soon as possible.

I would recommend to the freeholders that they have a structural engineer examine the roof structure and advise them in respect of any remedial works and repairs which would be needed to prevent further roof spread and to ensure that the plates that support the rafters are properly supported”.

5. The Applicant instructed Jason Day MEng (Hons) CEng MICE of Romala Design who reported in January 2023:

“I can confirm that a visual inspection was carried out of the attic roof space to the above property and it can be confirmed that a number of structural issues were found, these being:

The existing ceiling joists were clearly overstressed as they have deflected downwards quite considerably due to lack of ceiling binders and more importantly being too small in size.

The roof in general has a total lack of propping which has resulted in the deflection of the main purlins which in turn has allowed the rafters to slip.

Due to the rafter slip, deflection to the tops of the masonry walls have been pushed outwards in some areas, to the degree that the wall plate is not substantially seated on the walls anymore.

The existing purlins and hips are of great span and are far too small by inspection to allow safe distribution of the roof loads.

The existing large span timber valley beam is damaged due to rot via water ingress.

All the above points are due to the long standing constriction of the original roof (and lack of general maintenance) which in my opinion is not fit for purpose, without some substantial strengthening works.

In my opinion these strengthening works (which need to be designed first) need to be carried out as soon as possible as I am of the opinion that the roof is not fit for purpose and could carry on moving unless stiffened.

In terms of times frames, the roof appears not to be moving at present but it certainly has the propensity to move due to its lack of stiffness and robustness and therefore should be rectified as soon as possible, or otherwise movement could occur possibly due to movements under heavy winds or further degradation of the rotten valley beam. As the rafters and wall plate are not substantially seated on the walls, any movement could allow these rafters to slip off the wall which could in turn result in localised collapse of the roof structure”.

6. The Applicant had obtained a quotation from Romala of £1,750 plus VAT to prepare the specification for the roof works for the purpose of the building regulation submission.
7. On 30 January 2023 the Tribunal directed the Application to be determined on the papers without an oral hearing unless a party objected within 7 days. The Tribunal sent the Application and directions to the three leaseholders.
8. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 6 February 2023 indicating whether they agreed or disagreed with the Application and whether they required an oral hearing. The Tribunal also advised that if a party objected to the Application to make a statement setting out why they oppose the Application.

9. The Tribunal received responses from the two other leaseholders. Ms Oakley of 67B who agreed with the application and for it to be determined on the papers. On 10 February 2023 Ms Catherine Taylor of BDG Solicitors responded on behalf Mr Court, the other leaseholder of the top floor maisonette and freeholder, requesting that the Application for dispensation to be set aside as he wished to follow the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.
10. The Applicant had been made aware that Mr Court may object to the Application and submitted a response to the potential objection. It would appear the response had not been sent to Mr Court. In those circumstances the Tribunal has disregarded the response.

Determination

11. The Tribunal decides first whether to proceed to determine the Application on the papers. The Tribunal notes that Mr Court has not requested a hearing, and has not provided a statement on why he opposed the Application. Mr Court is legally represented so the Tribunal is entitled to assume that he has been advised of the content of the directions. The Applicant and the other leaseholder wishes the Application to proceed, and the Applicant has supplied evidence to substantiate the disrepair of the property. The Tribunal decides to proceed with the Application.
12. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
13. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
14. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal

should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

15. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
16. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
17. The Tribunal now turns to the facts. The Tribunal is satisfied that the works to make the roof safe are urgent and should be progressed without delay. However, it is clear from the evidence that it would be necessary to draw up a specification of the works for Building Control purposes. In this respect the Applicant has obtained a quotation for the specification from Romala Design Limited. The costs for drawing up the specification are not subject to the consultation requirements because it is not qualifying works, and there is no suggestion that the Applicant intends to enter into a long term agreement with Romala Design Limited. The Applicant if she chooses can proceed with the engagement of Romala Design Limited without the requirement to consult or the need to apply for dispensation. Mr Court has the right to object to the reasonableness of the costs for engaging Romala Design Limited but he would have to make an application under section 27A of the Landlord and Tenant Act 1985.
18. The question then is should the consultation requirements be dispensed with for the works that follow from the specification? Mr Court has declined the opportunity to make a statement giving reasons why he opposed the Application for dispensation. The Tribunal has before it no evidence of the relevant prejudice that Mr Court might suffer if dispensation from consultation was granted.
19. The Tribunal finds that (1) the evidence regarding the need to strengthen the roof without delay compelling and overwhelming, and (2) no evidence of relevant prejudice that might be suffered by a leaseholder if unconditional dispensation from consultation was granted. Given the findings the Tribunal concludes that unconditional

dispensation from the consultation requirements for the works to strengthen the roof should be granted.

20. Although the Tribunal has removed the requirement to follow the statutory consultation procedures in respect of the works to strengthen the roof, the Tribunal expects the Applicant to keep Ms Oakley and Mr Court and his legal representative informed of progress in connection with the works including providing copies of the specification and tenders received, and to invite comments upon them. The Tribunal notes that the Applicant in her Application referred to other urgent works. The Tribunal's decision does not extend to the other urgent works.

Decision

21. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works for strengthening the roof.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.