



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

Case reference : **CHI/00MW/LSC/2023/0004**
Claim Numbers
335MC939/336MC097/337MC367

Property : **56, 56A, 57 The Strand, Isle of
Wight, PO33 1JD**

Applicant : **Planning Solutions Limited**

Representative : **Michael Stickland**

Respondent : **Mr & Mrs Charlie and Helen
Bartlett
(56 The Strand)**
**Mr & Mrs Chris and Eirwen Driver
(56A the Strand)**
**Mr & Mrs Steve and Jean Symons
(57 The Strand)**

Representative :

Type of application : **Transferred Proceedings from
County Court in relation to service
charges.**

Tribunal member(s) : **Judge Tildesley OBE
Mr Turner-Powell FRICS
Ms Wong**

**Date and Place of
Hearing** : **27 April 2023
Havant Justice Centre**

Date of Decision : **31 May 2023**

DECISION

Summary of Decision

1. The Tribunal grants an order dispensing with the consultation requirements in respect of the works to the roof.
2. The Tribunal decides that each Respondent's contribution to the costs of the repairs to roof is £Nil.

Background

3. The dispute concerns costs of £29,870.00 for repairs to a shared roof to render the properties watertight. The Applicant recovered £21,850.00 of the costs through a claim against a latent defects insurance policy which was taken out in 2012 to cover defects in the original roof covering. The Applicant was seeking to recover the balance outstanding from the five leaseholders at the development which was calculated at £1,610.00 for each leaseholder.
4. The Respondents who are the leaseholders of 56, 56A and 57 The Strand challenge their liability to contribute towards the costs of the repair. The leaseholders at 56B and 56C have settled their accounts. The leaseholder at 56C is the brother of the Applicant's managing director. According to the Respondents, the leaseholder of 56B had only recently purchased the property and was given an allowance for the anticipated contribution to the roof repairs in the purchase price.
5. The Respondents argued that they were not liable to make their contribution of £1,610.00 on two grounds: (1) The Applicant had not complied with the statutory requirements under section 20 of the Landlord and Tenant Act 1985 regarding consultation with the leaseholders, and (2) the repairs to the roof were not carried out to a reasonable standard.
6. On 26 January 2023 the Tribunal held a preliminary hearing and decided on the evidence that the Applicant had not complied with the statutory requirements under section 20 of the 1985 Act. This would have meant that the Respondents' liability for the costs of the works would have been capped at £250 for each leaseholder. In accordance with the Lands Tribunal decision in *Warrior Quay v Joaquim* (LRX/42/2006) the Tribunal offered the Applicant the opportunity to make an application for dispensation from consultation requirements under section 20ZA of the 1985 Act. The Applicant duly submitted an application.
7. A hearing was held at Havant Justice on the 27 April 2023 to determine the application for dispensation and the outstanding issue of whether the repairs to the roof were carried out to the required standard. The

Tribunal heard evidence from the parties, all of whom attended in person except Mr and Mrs Symons who appeared via a video link. The parties had supplied their own bundles of documents.

The Properties

8. The three properties are part of a development of five units which all share the same flat roof. The subject properties are four bedroomed three storey terrace buildings. The remaining two units are two bedroomed properties positioned over the entrance to the car parking area. The Applicant constructed the development around 2012, and sold the five properties on leases of 999 years.

The Lease

9. The Applicant exhibited the lease for 56 The Strand dated 30 January 2015 and made between Planning Solutions Limited of the one part and Lorna Heather Doyle of the other part. The Tribunal understands the leases of all the subject properties contain the same terms.
10. Clause 1 is the definitions clause. Clause 1.1.19 defines “The Retained Parts” as the parts of the Estate [other than: 1.1.19.1 the Dwelling and the Car Parking Space; and 1.1.19.2 the Other Dwellings and car parking spaces included in the leases of the Other Dwellings], including, without prejudice to the generality of the foregoing, the roofs and roof space, the foundations, and all external, structural or load-bearing walls, columns beams, joists, floor slabs and supports of the Building, the electric gates and such other parts of the Building as are not included in the Dwelling and are not and would not be included in premises demised by leases of the Other Dwellings if let on the same terms as this Lease”.
11. Under Clause 4 the Landlord covenants with the Lessee to observe and perform the requirements of Schedule 6. Paragraph 6-2.1 states that if the Lessee pays the Service Charge and observes his obligations under this lease the Landlord must use his best endeavours to provide the Services (as listed at Schedule 7 paragraph 7.3). Paragraph 7.3.1 includes as a service: repairing and, whenever the Landlord, acting reasonably, regards it as necessary in order to repair, replacing or renewing the Retained Parts and the car parking spaces on the Estate whether or not included in this Lease or in the lease of any Other Dwelling.
12. Under Clause 3 the Lessee covenants with the Landlord to observe and perform the Lessee’s Obligations to the Landlord contained in Parts 1 and 2 of Schedule 5. Paragraph 5.18 of Part 1 of Schedule 5 provides that The Lessee must observe and perform his obligations contained in Schedule 7. Paragraph 2.4 of Schedule 7 provides that “For each financial year the Lessee must pay the Service Charge Percentage of the Expenses of the Services and of Insurance”.

13. Thus under the Lease the Applicant as Landlord is responsible for the repair of the retained parts which include the roof. the Respondents as Lessees are required to pay a contribution (the service charge percentage) to the costs incurred by the Landlord in repairing the roof.

The Facts

14. The evidence indicated that the problem of water ingress from the roof had been longstanding. Mr and Mrs Driver exhibited emails dated 5 November 2016 and 1 October 2017 reporting instances of leaks from the roof in the top floor bedroom and landing of 56A the Strand.
15. Mr and Mrs Bartlett exhibited an email from a Mr Paul Ronan, “a roofer” dated 9 March 2020. Mr Ronan stated that he had accessed the roof and found large water puddles near both outlets where the structure did not appear to be high enough to discharge water properly. Mr Ronan pointed out that with such an amount of standing water it would only need a tiny puncture in the membrane to allow ingress to the structure below. Mr Ronan, however, found no obvious signs of punctures.
16. Mr Bartlett sent an email dated 3 May 2021 where he reported water coming in from the roof in various places including the first floor. Mr Bartlett followed this up with another email on 10 May 2021 stating that the 10 year building warranty offered by Premier Guarantee had been invalidated and that the Applicant now had responsibility to remedy the defect. On 25 June 2021 Mr Bartlett provided the Applicant with a quotation to repair the roof from “a reputable builder”. On 16 July 2021 Mrs Bartlett requested an update from the Applicant for replacing the roof. The Applicant responded the same day by stating that its roofing contractor had just finished replacing the roof of the Esplanade Hotel and that he would be free shortly to examine the roof for the Strand Properties. On 24 July 2021 Mrs Bartlett reported that the roof was leaking again this morning and plaster was coming off the ceiling. The Applicant replied stating that the roofing contractor was hoping to inspect the roof in the early part of the week. On 25 July 2021 Mr Symons of 57 The Strand contacted the Applicant about water leaks in the back bedroom. On the 27 July 2021 the Applicant informed Mrs Bartlett that the roofing contractor had been on the roof today and had advised to overlay the roof with “Resitrix”¹.
17. On 2 August 2023 Mr Strickland on behalf of the Applicant sent the following letter to the five leaseholders:

¹ RESITRIX® is an all-purpose, extremely durable and easy-to-install, single-ply waterproofing membrane with an EPDM (synthetic rubber) surface layer.

“I am writing to advise that the Strand property management company are about to undertake works to deal with the ongoing issue of water ingress into the Strand properties above. It is evident that the roof material has failed in some areas due in principle to timber frame shrinkage which seems to have caused hairline cracks in the roofing surface. Whilst temporary repairs have occasionally stemmed this problem, it is not a long-term solution and will continue to blight the properties until a permanent fix is achieved.

On Tuesday, 3rd August, the company have engaged scaffolders to erect an access tower at the front gates (Strand entrance) of the car parking area. The rear gates will therefore be the main access to the car park whilst the roof repairs are being carried out. A roofing contractor will commence next week to overlay the roofs of the properties with a sheet material known as "Resitrix". This is similar to the roof material on No 1 East Street. There will be some remedial work carried out to improve levels and fill areas where water ponding has been experienced over this past year. "Resitrix" is a material used for tanking and will seal the entire roof, including upstands and cappings. (It carries a 30-year guarantee.)

The cost of these works is likely to be in the region of £30,000, including repairs and scaffolding. This cost will be added to the resident's property management account and recouped with the annual invoice from the Strand properties management company.

In the absence of any help from Premier Guarantee (as they have refused to even examine the roof), we have decided that the only way to conclude this issue is to arrange for the works to be completed ourselves. Whilst the original developer no longer has responsibility for the properties as the first 5-year maintenance period ended some time ago, we have secured a £15,000 contribution to the required works. The amount charged to the individual account for each of the Strand properties will thereby be circa £3,000 per property. I am writing to advise you in advance that this sum will be recharged to you once the works are completed satisfactorily.

If you have any questions, please advise me as soon as possible”.

18. On 3 August 2021 Mr and Mrs Driver responded to the Applicant's letter of 2 August 2021 stating that they recognised that the roof work was essential and has been for some time but that they were unhappy at being asked to contribute to the repair work. On 5 August Mr Symons stated that he did not feel he should make a contribution to the costs of the works. On 8 August 2021 Mrs Bartlett expressed her disappointment about the state of affairs but felt she had no option but to pay the £3,000. Mrs Bartlett, however, indicated that she would only pay if certain conditions were met.
19. On 16 September 2021 the Applicant wrote to the three Respondents to state that the roof had now been successfully completed, and all of the roof areas have now been tanked including all upstands and capping. The Applicant said that the rain water outlets had been lowered to ensure the rain water can egress the roofs without ponding and any defects found in the base boarding have been repaired prior to the new

roofing material placement. Finally the Applicant explained that it was waiting for the final invoice from the roofing contractor, but it did not expect there to be any extra costs involved. The total sum, less the Applicant's contribution of £15,000 would therefore be added to this year's maintenance charge as confirmed in the letter dated 2 August 2021.

20. The Applicant supplied a breakdown of the costs: Skyline Roofing services (£29,000), Isle Scaffold (£800) and Administration costs attendance of Lance Wells (£70) which totalled £29,870.
21. On 11 August 2021 Mr Symons brought to the Applicant's attention a copy of the latent defects insurance policy which had been specifically taken out in 2012 to cover defects in the roof coverings. On 31 August 2021 the Applicant made a claim under the policy which was met on 30 November 2021 in the sum of £21,000.
22. On 8 December 2021 the Applicant informed the Respondents that it had recovered some of the costs for the roof repair from the insurance company. This meant that the remaining balance to be paid by the leaseholders would be £8,150 which would be split five ways at £1,610 for each leaseholder. The Applicant added that this represented excellent value for a replacement roof with an extended warranty of 30 years for the Resitrix material used. The Applicant said that it had withdrawn its offer of a contribution of £15,000 towards the costs of the works following the settlement with the insurance company.
23. On 22 December 2021 an invoice for the sum of £1,610 was sent to each leaseholder. The Tribunal notes that the invoice did not include the name and address of the landlord and it was not accompanied by a Summary of Tenants Rights and Obligations.
24. On 22 December 2021 Mrs Bartlett commissioned a report from Paul D Tombleson MSC ACABE Assoc RICS of Tombleson Associates, a local firm of surveyors on the standard of the recent roofing works at the property. Mr Tombleson concluded that

“The quality of the workmanship, as seen at the time of inspection, and as clearly illustrated in the various attached images, indicates that this covering is of such poor condition and installation quality, that I am of the opinion that full replacement is required. The workmanship is considered to be sub-standard and not in accordance with manufacturer's recommendations or reasonable expectations from a professional contractor. I would therefore advise that you do not make any payment to the Freeholder in this regard, as the workmanship is sub-standard and a new covering should be installed”.
25. Mr Symons invited Mr Craig Meaney of Carlisle Construction Materials Limited (CCML) which is the licensed supplier of Resitrix to inspect the installation of the roofing material at the property. On 4 February 2022 Mr Meaney identified that corner patches were required to be installed

across many external corners of the roof, that the roof substrate was very uneven, that attention was required to the welded lap and that no visible bleed could be seen across the roofing install. Mr Meaney identified that urgent action was required. On the 7 June 2022 Mr Meaney carried out a further inspection and found that attention was still required to the repairs on the roof. On 11 August 2022 Mr Meaney informed Mr Symons that as the contractor had not installed Resitrix to the CCML guidelines the product warranty was now void.

26. Mr Symons asked Redhead and Roberts Limited to inspect the roof and give a quotation for the repairs to the roof. Mr Meaney had referred Redhead and Roberts Limited, a qualified and licensed Resitrix roof installation contractor, to Mr Symons. On 24 June 2022 Redhead and Roberts Limited informed Mr Symons that

“Upon inspection, we were of the opinion, that the Resitrix installation was of such poor quality, that we were not prepared to put our name to the work and attempt to effect the necessary repairs to ensure that the roof was finished to the correct standard. Put simply, the workmanship is appalling”.

27. Redhead and Roberts supplied a quotation of £42,296.00 plus VAT of £8,459.00 install a new Resitrix flat roof water membrane and to re-board the entire flat roof area.

Consideration

Should the Application for Dispensation from Consultation be granted?

28. 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. Under section 20ZA of the 1985 a landlord can apply for dispensation from the consultation requirements. When considering such an application 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.
29. 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.

30. 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”.
31. 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.
32. The Applicant argued that it could not comply with the consultation requirements because it had to take immediate action to stop the ingress of water into the properties so as to prevent further damage to the properties. The Applicant pointed out that the selected contractor was an experienced roofer with many years’ experience and had been certified to lay the Resitrix product since 2016. The Applicant added that the contractor was also available at short notice, that his price was competitive and that the works came with a 30 year guarantee. The Applicant insisted that the leaseholders were informed of the specification and the price of the works before they started. Finally the Applicant stated that it offered to pay £15,000 towards the costs which reduced the contribution payable by each leaseholder to £3,000.
33. The Respondents argued that the Applicant had known about the water leaks from the roof for sometime. Mr Driver referred to his emails about the water leaks in 2016 and 2017. The Respondents stated that the Applicant did not consult them about the proposed works. In their view they were presented with a “fait accompli”, and told that the works were taking place. The Respondents contended that the Applicant’s actions in respect of the roof had invalidated the 10 years building warranty offered by Premier Guarantee Limited. The Respondents pointed out that the works were not carried out to the required standard and as a result the 30 year product warranty for Resitrix had been declared void.

34. The Tribunal is required to place weight on the circumstances known at the time the decision was taken to proceed with the works without going down the full consultation route. The Respondents have largely concentrated on the events that have happened after the works were completed which are of marginal significance for the Tribunal's factual enquiry.
35. The Respondents were sceptical of the Applicant's claim that the works were urgent. The Tribunal understands their scepticism because the issue of water leaks from the roof had been going on for some time well before July 2021. The Tribunal considers that a more accurate description is that events over the water leaks came to a head in July forcing the Applicant to take action in respect of roof leaks.
36. The test for deciding whether to grant dispensation is not so much about the urgency of the works but about what steps the Applicant took to safeguard the leaseholder's protections under the 1985 Act when it decided to proceed with the works without going through the section 20 consultation process. In this case the Tribunal finds that the Applicant chose an experienced contractor who was qualified to fit the Resitrix membrane and that the standard of works would be protected by a 30 year product guarantee. Further the Applicant was prepared to contribute £15,000.00 towards the costs of repair. The Tribunal concludes at the time the decision was taken to process the works, the Applicant put in place sufficient safeguards in respect of the costs and the quality of works to mitigate any potential prejudice to the leaseholders from the failure to consult. The Respondents' case on prejudice is derived from subsequent events which they say undermined the efficacy of the safeguards. As explained previously the Respondents' evidence in this respect may be relevant to the issue of reasonableness of the charges as assessed against the standard of the actual works but has marginal bearing on whether the Tribunal should grant dispensation.
37. The Tribunal is, therefore, satisfied on balance that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.
38. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works to the roof.**

Whether the repairs to the roof were carried out to a reasonable standard?

39. Section 19(1)(b) of the 1985 Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

40. On a literal reading of these words in section 19(1)(b) it would follow that if the works or services are not of a reasonable standard, there can be no recovery. However, in *Yorkbrook Investments Ltd v Batten* (1986) 18 H.L.R. 25 the Court of Appeal rejected a submission to this effect in relation to very similar provisions of Housing Finance Act 1972 s.91A(1). If the works are not to a reasonable standard, only the cost which could have been charged for the sub-standard works would be recoverable against the leaseholders.
41. The Tribunal finds there was compelling evidence that the works to the roof were not carried out to a reasonable standard. The Respondents had engaged three different and independent persons (Mr Tombleson, Mr Meaney, and Redhead and Roberts) to inspect the quality of the works on the roof, and all three came to the same conclusion that the works were not to the required standard.
42. The Applicant challenged the findings of the three persons. The Applicant argued that Mr Tombleson had no knowledge of the history of the state of roof and no knowledge of the material used. The Applicant produced a letter from the contractor who carried out the roof works disputing Mr Tombleson's findings. The Applicant suggested that Mr and Mrs Bartlett had engaged Mr Tombleson to find reasons for resisting any charge for the costs of the roof repairs.
43. The Applicant stated that the two reports of CCML, the material manufacturers, had identified improvements which the Applicant said had been completed by the contractor. The Applicant contended that the manufacturer's product warranty could not be offered because the works were one of repair and not of a new construction. The Applicant added that the Respondents were not prejudiced by the failure to give a guarantee for the roof works because the original roofing material would have ceased at the time the repairs were completed.
44. The Applicant said that the solution of reboarding proposed by Redhead and Roberts was not viable because it would have required the contractor to locate every joist beneath the insulation and refixing the new boarding with 10 inch screws. According to the Applicant, the cost of locating the joists together with the costs of works to the upstands were not included in the quotation of Redhead and Roberts. Further the Applicant pointed out that the quotation provided by them was significantly more than the costs of the repairs charged by the Applicant's contractor, and would have resulted in the leaseholders paying considerably more for the works to the roof.
45. The Applicant asserted that there had been no instances of water ingress through the roof following completion of the repairs.
46. The Tribunal considers that the Applicant's rebuttal has not undermined the findings of three independent persons about the poor standard of the repairs to the roof. The Tribunal places weight on the fact that this was the view of three independent persons, two of whom

were qualified to speak about the laying of Resitrix, and the other was a qualified surveyor. In the Tribunal's view, the Applicant in his evidence had attempted to deflect attention away from Mr Meaney and Redhead and Roberts' principal conclusion that the Resitrix was not laid in accordance with established and recognised practice. Further the Applicant's suggestion that the failure to give a warranty for the repairs was of no consequence contradicted the offer given to the leaseholders that the repairs would be backed by a 30 year warranty.

47. Similarly the Tribunal was unimpressed with the Applicant's challenge to Mr Tombleson's report. Mr Tombleson had inspected the roof and gave a detailed account of his findings. The Applicant failed to recognise that Mr Tombleson was bound by professional standards when making his allegation that Mr Tombleson had written the report for the purpose of Mr and Mrs Bartlett avoiding liability to contribute to the costs of the repairs. In the Tribunal's view, it was incumbent upon the Applicant when faced with the views of three independent persons about the poor standard of works to supply a more convincing denial than simply relying on the opinions of the original contractor and of its, managing director, Mr Stickland.
48. The Tribunal is, therefore, satisfied that the repairs carried out the roof were not to the required standard.
49. The next question for the Tribunal is the amount that the costs of £29,870.00 should be reduced to reflect the sub-standard works. The Respondents argued that they were not liable to make any contribution towards the costs of the works. The Tribunal has already referred to the decision in *Yorkbrook Investments* which rejected the proposition that if the works or services were not of a reasonable standard, there can be no recovery. The Tribunal, therefore, considers before it determines what the Respondents should pay, it has to decide the amount of the reduction to reflect the costs of the sub-standard works. The Tribunal is not assisted in this task by the fact that the Respondents and the three independent persons did not suggest an amount for a reduction other than the Respondent should not make any payment whatsoever.
50. The Tribunal having regard to the evidence of the substandard works which carried no warranty for the repairs and its own knowledge and experience, decides on a reduction of 50 per cent. This produces a figure of £14,935.00 for the costs of the works recoverable through the service charge. The Tribunal observes that the Applicant has recovered £21,850.00 towards the costs from a claim against a latent defects insurance policy, which exceeds the costs chargeable to the leaseholders. The Respondents are entitled to have the benefit of the Claim to set off their liability for the £14,935.00, which reduces their liability to nil contribution.
51. The Tribunal is satisfied the Applicant is not prejudiced by this determination. The Applicant is ultimately responsible for the sub-standard works and liability for the amount taken off for substandard

works rests with the Applicant. Further the Tribunal notes that the Applicant offered to contribute £15,000.00 towards the costs at the time the decision was taken to repair the roof. The Tribunal had regard to this offer when deciding to grant dispensation from consultation. The Tribunal considers that the Applicant should not benefit twice from the fact that the Applicant subsequently withdrew its offer of £15,000.00 when it realised from information supplied by Mr Symons that it could make a claim against the insurance policy.

52. **The Tribunal decides that each Respondent's contribution to the costs of the repairs to roof is £Nil.**

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.