



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

Case Reference	: CAM/22UD/LDC/2023/0008
Property	: Flats A-D, 35 Rose Valley, Brentwood, Essex CM14 4HZ
Applicant	: Rose Valley (Brentwood) Management Company Limited
Representative	: East Block Group Limited – Sam Lapworth
Respondents	: All leaseholders of dwellings at the property (including any of their sub- tenants of any such dwelling) who are liable to contribute to the cost of the relevant agreements
Type of application	: For dispensation from consultation requirements - Section 20ZA of the Landlord and Tenant Act 1985
Tribunal members	: Mary Hardman FRICS IRRV(Hons)
Date of decision	: 24 August 2023

DECISION

Description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in an electronic bundle from the Applicant. I have noted the contents and my decision is below.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in respect of qualifying works to repair the roof.

Reasons for the tribunal's decision

The application

- (1) The applicant freeholder seeks dispensation with the statutory consultation requirements in respect of qualifying works to repair structural damage to the roof caused by the removal of part of a chimney to one of the flats.
- (2) They state that removal of the bottom half of a chimney to one of the flats, without ensuring support, has caused structural damage to the roof. Corrective works have been determined by relevant professionals.
- (3) The work was said to be urgent to prevent further damage
- (4) The relevant contributions of leaseholders through the service charge towards the costs under these agreements would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
- (5) In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
- (6) **The only issue here for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements**
- (7) **This application does not concern the issue of whether any service charge costs under the relevant agreements will be reasonable or payable or by whom they are payable.**

The Property and parties

- (8) The applicant says the property consists of a converted house, constructed of brick with a tiled roof and converted into 4 flats.
- (9) The application is made by East Block Group Limited on behalf of the landlord, Rose Valley (Brentwood) Management Company Limited.

The application was made against the leaseholders of the relevant flats (the “Respondents”)

Procedural history

- (10) The Applicant says that dispensation is sought, as explained below.
- (11) Initial case management directions were given on 11 April 2023. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 5 May 2023.
- (12) The directions further provided that this matter would be determined on or after 25 May 2023 based on the documents, without a hearing, unless any party requested an oral hearing
- (13) On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.
- (14) No request for a hearing was made by the parties.

The Applicant’s case

- (15) The applicant states – as set out above that that removal of the bottom half of a chimney to one of the flats, without ensuring support, has caused structural damage to the roof. Corrective works have been determined by relevant professionals.
- (16) The work was said to be urgent to prevent further damage
- (17) Additionally, one of the leaseholders of the four flats passed away leaving no immediate qualifying heir. Searches by the local council had located heirs in the United States however all attempts to contact them had failed. It was anticipated that within the next six months the leaseholder’s estate would be deemed bona vacantia, but they could not wait for that to be implemented in terms of the urgency of the work. This meant that it was not possible to complete a s20 consultation. They were taking legal advice on this.
- (18) Their initial submission omitted quotes on the basis that ‘any obtained to date were now out of date and updates would be obtained following the tribunals decision.
- (19) The Tribunal did not find this satisfactory and asked the applicant to forward quotes, as they were not prepared to proceed on this basis.
- (20) Two quotes were forwarded on 19 June 2023 and confirmation that they had been sent to the three leaseholders received on 12 July 2023.

- (21) The quotes were for £35,480.38 plus VAT (undated) and for £33,695.50 plus VAT (revised 4/5/21).

The Respondents' position

- (22) As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
- (23) The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed

Determination

- (24) Following the Supreme Court decision of **Daejan Investments Ltd. v Benson [2013] UKSC 14**, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the consult This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
- (25) The tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the structural repairs to the roof.
- (26) It therefore determines under section 20ZA of the 1985 Act to dispense with all relevant consultation requirements in relation to these works.
- (27) **This is not an application for the tribunal to approve the reasonableness of the contracts or the reasonableness, apportionment or payability of any service charge demand.**
- (28) **I make no finding in that regard and the leaseholders will continue to be able to make an application under section 27A of the Act in respect of the reasonableness of the agreements and/or the reasonableness, apportionment or payability of the service charge demand for them.**
- (29) There was no application to the tribunal for an order under section 20C of the 1985 Act.
- (30) The Applicant shall be responsible for serving a copy of this decision on all leaseholders.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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 look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).