



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

Case References : **BIR/44UF/LDC/2023/0013**

Properties : **Properties at The Castris 34-40, Warwick Road, Kenilworth, CV8 1HE**

Applicant : **Lever Arch Investments Ltd**

Representative : **Chris Edsall, Loveitts**

Respondents : **The Leaseholders of The Castris**

Type of Application : **An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of Consultation Requirements.**

Tribunal : **Judge P.J Ellis.
V Ward BSc Hons FRICS – Regional Surveyor**

Date of Hearing : **4 September 2023**

Date of Decision : **8 September 2023**

DECISION

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The Tribunal is satisfied it is reasonable to dispense with the consultation requirements on the Applicant in respect of a contract for qualifying works for the properties the subject of this applications, namely:

Qualifying works comprising the replacement of roof/terrace covering more particularly described in the application which are to start in 2023.

Background and Reason for the Application

1. This is an unopposed application for dispensation from the consultation requirements of s20 Landlord and Tenant Act 1985 (the 1985 Act). The application was issued on 18 May 2023 upon payment of the issue fee. Directions were issued on 26 May 2023 and amended on 30 June 2023 to provide for adjustments to the timetable for service of the application on the leaseholders.
2. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee must pay by way of a contribution by way of a “qualifying long term agreement” (“QLTA”) unless the consultation requirements have been met or dispensation from the same has been granted.
3. A qualifying long-term agreement is an agreement for more than 12 months where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100. In addition, there is a statutory maximum that a lessee must pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.
4. The only issue for the Tribunal to determine under these applications is whether it is reasonable to dispense with the statutory consultation requirements.
5. These applications do not concern the issue of whether any service charge costs will be reasonable or payable.
6. The reason for the application is that the Applicant seeks to carry out urgent repair works to the roof of the building in order to prevent leaks of water. The application gives further particulars of the consequences of the leak and the urgency of the need for its repair.
7. Notice of the application was served on the leaseholders. Two leaseholders responded stating they did not oppose the application. No other leaseholder made a response. The Tribunal has received no objections to the work.

Decision

8. Although the leaseholders do not object to this application, the Tribunal must be satisfied under s20ZA that it is reasonable to dispense with consultation requirements.
9. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20.
10. The unchallenged evidence is that a leak on the roof of the building is allowing an ingress of water into one of the flats rendering it uninhabitable. A contractor has been instructed to carry out necessary repairs. There is no complaint that the work is unnecessary. The leaseholders are not prevented from challenging the reasonableness of any service charges arising from the relevant work.
11. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements before entering a contract for qualifying works namely the replacement of roof/terrace covering more particularly described in the application which are to start in 2023.

Appeal

12. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Tribunal Judge PJ Ellis.