



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

Case reference	:	CAM/OOKG/LDC/2023/0017
Property	:	Flats 1, 1A -10 Steepleview, 50 London Road, Grays, Essex, RM17 5XY
Applicant	:	Steepleview RTM Co.
Respondents	:	The leaseholders of the dwellings who are liable to contribute to the costs of relevant works
Type of application	:	For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985
Tribunal members	:	Judge J. Oxlade
Date of decision	:	3rd May 2023

DECISION

This determination is made on the basis of the papers only, it being clear that the issues highlighted therein suggest that it is suited to consideration in this way. None of the lessees requested a hearing; further, it is in the interests of justice to progress this application without delay in light of the concern over the deterioration in the condition of the flat roof covering, causing damp ingress into flat 8, leading to mould infestation, and consequently being a risk to the inhabitant.

The documents available to the Tribunal comprise a bundle of document filed by the Applicant's representatives (Griffin, The Property People), comprising: the application and two quotes, photographs of the building (external and

affected internal parts), notice of intention of internal/external works dated 6th March 2023, together with Directions made by Judge Harman FRICS IRRV (Hons) on 22nd March 2023, an email dated 28th March 2023 confirming that the Tribunal's directions made as to service of the application on interested parties had taken place (together with a document showing posting and a copy of a sample letter sent to each lessee dated 27th March 2023), and sample lease showing at clause 1(a)(i) of Fifth Schedule the liability on the lessor to maintain, repair, and/or renew the roof, and by clause 1(c) the Lessees obligation to pay by way of further rent, a contribution to the expenses referred to in the Fifth Schedule.

Decision of the tribunal

The tribunal dispenses with all the consultation requirements to rectify the problems with the building referred to in the application and further particularised in the , pursuant to section 20ZA of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination, pursuant to section 20ZA of the Landlord and Tenant Act 1985, as amended (“the 1985 Act”) for the dispensation from consultation requirements in respect of certain “qualifying works” (within the meaning of section 20ZA), which works have not yet started, but the intention is to start as soon as possible.
2. The applicant is the RTM company of 1, 1A-10 Steepleview, (“the property”), comprising a building of 11 units, let out on long leases.
3. The respondents are the leaseholders of the flats in the property who are potentially responsible for the cost of the works under the terms of their leases.
4. The qualifying works are described in the application as urgent for the following reasons: the roof covering has failed, and has permitted water ingress, which has found its way into the residential accommodation, particularly flat 8, and is making it uninhabitable..
5. At this stage the only issue is whether it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act and the Service Charges (Consultation etc)(England) Regulations 2003 in respect of phase 1; the Applicant says that the delay inherent in following the consultation process would expose the lessees to the risk of further damage to the fabric of the building and the deterioration on the health of the occupant of flat 8. As any party discontent with the service charges incurred as a result of these works can make a future application under section 27A of the 1985 Act to determine the

payability of any service charge under the lease, those matters are not determined as part of this application.

Paper determination

6. The application is dated 8th March 2023. Directions were issued by Judge Hardman on 22nd March 2023 which required the applicant landlord by 29th March 2023 to send to each of the leaseholders, copies of the application form, a brief letter (including an indication of whether or not the landlord intended to make an insurance claim in respect of the works) and a copy of the directions.
7. The directions gave those leaseholders who oppose the application until 17th April 2023 to respond to the tribunal and to send to the landlord a statement in response to the application with a copy of their reply form.
8. No objection has been submitted by the respondents who have taken no active part in this application, and have provided no response at all.
9. The directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. Two copies of the paginated bundle were required to be sent to the tribunal by 28th April 2023.
10. The directions provided that the tribunal would determine the application based on written representations unless any request for an oral hearing was received by 10th April 2023; no such request was received. Therefore, this application has been determined by the tribunal on the information supplied by the applicant.

The law

11. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a tribunal for a determination to dispense with all or any of the consultation requirements in relation to 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.'

12. In the case of *Daejan Investments v Benson and others* [2013] UKSC 14 the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, said *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 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'*.

Findings of fact

13. The applicant gives the following reasons for seeking dispensation: the works have become urgent because the current effect of damp and mould on the dwelling below the affected part of the roof continues to have a detrimental effect on the health of the tenant. The conditions have become progressively worse.
14. Within the tribunal bundle are photographs of the terrace/roof top, the problems, and the internal damage to the flat, which is significant. There are two quotes: one from Capital roofing dated 6th March 2023, together with a report; there is a quote from Elm Site Services Limited dated 13th February 2023.
15. None of the lessees have raised objection to the short-circuiting of the dispensation of consultation.
16. On the basis of the information submitted by the applicant, and in the absence of any objections or submissions from the respondents on the application for dispensation, the tribunal is satisfied that the qualifying works are necessary, and somewhat urgent in view of the damage which is being caused to the flat below, and which pictures show to be quite advanced with the potential for damage to health.
17. As the respondents have raised no objection to the works being expedited as part of the existing, the Tribunal finds no evidence that the respondents would suffer prejudice if dispensation were to be granted.

The Tribunal's decision

18. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
19. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.
20. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.
21. There was no application before the tribunal for an order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge). This could be the subject of a future application in the event that any costs are charged to the leaseholders.

22. It is the responsibility of the applicant to serve a copy of this decision on all respondents.

Name: Judge J. Oxlade

Date: 3rd May 2023

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).