



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

Case Reference : **CAM/38UF/LDC/2023/0021**

Property : **Wickham House,
58 Market Square,
Witney, Oxfordshire
OX28 6AF**

Applicant : **Wickham House Management Ltd.**

Representative : **Warwick House Estates
(Managing Agent)**

Respondents : **Leaseholders of the 7 dwellings
at the Property**

Representative : **None**

Landlord : **Doris Field Charitable Trust**

Type of Application : **S20ZA of the Landlord and Tenant
Act 1985 - dispensation of
consultation requirements**

Tribunal : **N. Martindale FRICS**

Hearing Centre : **Cambridge County Court, 197 East
Road, Cambridge CB1 1BA**

Date of Decision : **12 June 2023**

DECISION

Decision

1. The Tribunal does NOT grant dispensation from any of the requirements on the applicant to consult all leaseholders under S.20ZA of the Landlord and Tenant Act 1985, in respect of the qualifying works referred to.

Background

2. The landlord applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application related to the commissioning of works at the Property which appeared to concern urgent temporary repairs to the roof over flat 7 in particular; prior to separate larger scale permanent repairs to the roof in general, which are not the subject of this application.

Directions

4. Directions dated 26 April 2023 were issued by Regional Surveyor Mary Hardman FRICS of the Tribunal, without an oral hearing. They provided for the Tribunal to determine the application on or after 6 June 2023, unless a party applied on or before 16 May 2023 for a hearing. No request was received by the Tribunal.
5. The applicant, believed to be the head leaseholder of the Property, Wickham House Management Ltd., was to send to each of the leaseholders of the flats at the Property; a copy of the application form, brief description of the works, an estimate of the costs of the works with any other documents relied upon and these directions.
6. File with the Tribunal a letter confirming how this has been done, stating the date(s) on which this was done.
7. Leaseholders who objected to the application were to send a reply form and statement to the Tribunal and applicant, by 19 May 2023. The applicant was to prepare a bundle of documents including the application form, Directions, sample lease and all other documents on which they wanted to rely; all responses from leaseholders, a certificate of compliance referred to above; with 2 copies to the Tribunal and one to each respondent leaseholder and do so by 26 May 2023.

8. In the event, the Tribunal did not receive any requests for a hearing, nor did it receive any forms in support of or objection to respondents either directly or indirectly via the bundle.
9. The Tribunal determined the case on the bundle received from the applicant, only.

Applicant's Case

10. The Property appears to be a traditionally built, apparently former commercial building in a town centre location, since subdivided and converted in the early 1980's, into 7No. self contained flats.
11. The application at box 7 confirms that these are to be qualifying works and that they had been started. At box 9 the applicant was content for paper determination and applied for them, at box 10, to be dealt with by Fast Track. The applicant states: *"There was already a S20 Notice of Intention in place. Quotes were being obtained for a full roof repair. An immediate temporary repair was needed as water started to come in to flat 7 and cause damage."*
12. The application at 'Grounds for seeking dispensation', box 1. stated: *"A SUDDEN DETERIORATION ON A ROOF ALREADY IN NEED OF REPAIR, MEANT THAT WATER WAS COMING IN TO FLAT 7. A TEMPORARY FIX NEEDED TO BE CARRIED OUT TO MAKE THE PROPERTY WATER TIGHT. TOTAL COST INCLUDING VAT WAS £2880.00"*
13. The application at box 2. below this, described the consultation that had been carried out or is proposed to be carried out; *"NOTICE OF INTENTION ALREADY IN PLACE TO COMPLETE FRULL ROOF REPAIR. QUOTES BEING OBSTAINED FOR THIS AHEAD OF STATEMENT OF ESTIMATES BEING ISSUED."*
14. The application at box 3. explained why they sought dispensation of all or any of the consultation requirements. *"THE COST OF THE REPAIR EXCEEDED SECTION 20 THRESHOLD."*

Respondent's Case

15. The Tribunal did not receive any objections or other representations from the leaseholders.

The Law

16. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or

landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

17. Dispensation is dealt with by S.20 ZA of the Act which provides:-
“Where an application is made to a leasehold valuation 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.”

18. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

**(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Decision

19. The scheme of the provisions is designed to protect the interests of leaseholders and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
20. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
21. The applicant failed to comply with key Directions. The application was neither signed or dated. The applicant through its managing agent Warwick Estates named its *own*, managing agent Warwick Estates as the sole respondent at the Property. Regional Surveyor Mary Hardman here corrected the respondents' identities to "all leaseholders" at the Property.
22. The applicant included a copy of what appeared to the Tribunal to be the head lease date 27 January 1984, between itself as tenant and its then superior landlords (Messrs Seach-Allen, Runyard, & Wilson). There was also a subsequent deed of variation dated 15 August 1984 to that lease, between the same parties. Assuming that the head lease still subsists, it shows that the tenant, Wickham House Management is obliged to maintain the interior and exterior of the Property.

23. However it is understood that this application concerns the obligations set out in any one of 7 sub-leases from Wickham House Management as landlord. The applicant failed to include a sample sub-lease, showing the landlord's repairing obligation and the sub-leaseholder's service charge payment obligation.
24. Notwithstanding this assistance from the Tribunal, the bundle filed by the applicant failed to comply with Directions 2(b), 6(a)(b)(c). Although copies of short letters dated 8 May 2023 to each of named leaseholders were included, no correspondence addresses were provided. The applicant did not include a statement of service and compliance as required. There was insufficient evidence that notification of the application, with the information specified had been completed as set out in the Directions. The lack of provision by the applicant, of a sample sub-lease, prevented any further assessment by the Tribunal to consider grant of dispensation.
25. The fact that no objections to the application had been received is not alone sufficient reason to dispense with any aspect of the consultation process. The fact that the applicant did not certify that the Directions had been complied with regarding notification of all leaseholders, coupled with a misidentification of the respondents and the inclusion of the headlease rather than a sample sub-lease in the application form itself, concerns the Tribunal.
26. Application from dispensation of any of the statutory consultation process is refused. The maximum sum to be chargeable to each leaseholder of any of the flats at this Property, for this temporary work and any associated costs fees or charges, is therefore capped at £250.
- 27. In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**