FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BU/LDC/2023/0067**
Property	**:**	**Apartment 10, The White House, Suffolk Road, Altrincham WA1 4QZ**
Applicant	**:**	**Suffolk Road Estates Management Ltd**
Applicant's Representatives	**:**	**Premier Estates Ltd**
Respondents	**:**	**The Residential Long leaseholders at The White House (see Annex A)**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 20ZA**
Tribunal Members	**:**	**Judge J.M.Going** **H.Thomas FRICS**
Date of Decision	**:**	**29 January 2024**

DECISION

The Decision

Any remaining parts of the statutory consultation requirements relating to the roof repairs which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 24 October 2023 ("the Application") the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of works required to the roof at the property ("the roof repairs ").

2. The Tribunal issued Directions on 30 November 2023 confirming that it considered that the Application could be resolved on submission of written evidence leading to an early determination, but that any of the parties could request an oral hearing. None have done so.

3. The Applicant, acting through its managing agent Premier Estates Ltd ("Premier") and after the issue of the Directions provided a bundle of documents including a statement of case, copies of the property lease ("the Lease"), letters dated 11 November 2023 sent to each Respondent ("Flat Owner") and a quotation from Top Mark Solutions issued on 3 October 2023 with a price for the works of £2880 plus VAT (being £3456).

4. None of the Flat Owners has indicated to Premier or the Tribunal any objection to the Application.

The facts and background to the Application

5. The White House has not been inspected by the Tribunal, but is described in the Application as "a four-storey self-contained residential unit comprising of 10 apartments". Apartment 10 is described in the Lease as being a penthouse flat.

6. It is understood, from the Lease, that each Flat Owner owns an apartment within The White House under a 990-year term lease and is due to pay through the service charges a share of (inter alia) the costs of "maintaining, repairing, rebuilding maintaining and keeping the Retained Parts *(defined as including "the structural parts of the building including rooves…")* and every part of thereof in good and substantial repair and renewing and replacing all worn or damaged parts thereof".

7. It is explained in the Application "apartment 10 has an ongoing active leak allowing water ingress … damage is being caused internally" and subsequently in the Applicant's statement of case it was stated that "to mitigate damage to the apartment, urgent roof works were noted to be required. Premier has updated the leaseholders in respect of the works… As there are only 10 apartments Premier Estates were aware the cost of the work would exceed the threshold

requiring consultation. Therefore, on 24 October 2023, Premier Estates issued a Notice of Intention in respect of the works as required under section 20 of the Landlord and Tenant Act 1985… The works are required to be carried out as soon as possible. Further, there are concerns the property may become *[un]*inhabitable should the roof leak remain in place pending consultation".

8. None of the evidence has been disputed.

9. The Tribunal's Directions confirmed that any Flat Owner who opposed the Application should, within the stated timescale, send to the Applicant and to the Tribunal any statement they might wish to make in response.

10. None have done so, and the Tribunal convened on 26 January 2024 to determine the Application.

The Law

11. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

12. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4 stage process: –

- Stage 1: Notice of intention to do the works

  Written notice of its intention to carry out qualifying works must be given to each tenant and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting tenants to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

  The Landlord must seek estimates for the works, including from a nominee identified by any tenants or the association.

- Stage 3: Notices about estimates

  The Landlord must supply tenants with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by tenants and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

  The Landlord must give written notice to the tenants within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the tenants' nominee.

13. Section 20ZA(1) states that: –

"Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works… the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

14. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements which are part and parcel of a network of provisions, is to give practical support is to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation are not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

15. The Tribunal began with a general review of the papers, to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of its procedural rules permits this provided that the parties give their consent (or do not object when a paper determination is proposed).

16. None of the parties have requested an oral hearing and having reviewed the papers, the Tribunal is satisfied that this matter is suitable to be determined without a hearing. The documentation, which has not been challenged, provides clear and obvious evidence of the contents and the relevant facts, allowing conclusions to be properly reached in respect of the issues to be determined.

17. Before turning to a detailed analysis of the evidence, the Tribunal reminded itself of the following considerations: –

- The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
- In order to grant dispensation the Tribunal has to be satisfied only that it is reasonable to dispense with the requirements: it does not have to be satisfied that the landlord acted reasonably, although the landlord's actions may well have a bearing on its decision.
- The Application does not concern the issue of whether or not service charges will be reasonable or payable. The Flat Owners retain the ability to challenge the costs of the additional works under section 27A of the 1985 Act.
- The consultation requirements are limited in their scope and do not tie the Applicant to follow any particular course of action suggested by the Flat Owners, and nor is there an express requirement to have to accept the lowest quotation. As Lord Neuberger commented in *Daejan* "The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are done by, and what amount is to be paid for them".
- Albeit, as Lord Wilson in his dissenting judgement in the same case also noted "What, however, the requirements recognize is surely the more significant factor that most if not all of that amount is likely to be recoverable from the tenant."
- Experience shows that the consultation requirements inevitably, if fully complied with, take a number of months to work through, even in the simplest cases.
- The Office of the Deputy Prime Minister in a consultation paper published in 2002 prior to the making of the regulations explained "the dispensation procedure is intended to cover situations where consultation was not practicable (e.g. for emergency works)…."

18. Applying the principles set out in *Daejan* the Tribunal has focused on the extent, if any, to which the Flat Owners have been or would be prejudiced by a failure by the Applicant to complete its compliance with the consultation requirements.

19. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the Flat Owners beyond the obvious facts of not having been consulted, or of having to contribute towards the costs of works.

20. The Tribunal finds no evidence of any actual or relevant prejudice to the Flat Owners: it is clear that they have been made aware of the need for the roof repairs and have received a Stage 1 notice; it has been confirmed that estimates have been obtained and published; and there is no evidence that any dispute or have disputed the need for the roof repairs.

21. It is also noted if the Applicant accepts the exhibited quotation from TopMark Solutions the resultant cost would amount to £345.60p for each Flat Owner (assuming from the Lease that that is to be equally divided between them).

22. The Tribunal accepts that where leaks occur there is inevitably a degree of urgency. Clearly there are immediate issues for those Flats directly affected as well as for their owners, occupiers and any visitors in terms of health, safety and comfort. There is also the clear possibility of consequential and escalating damage if such problems are not properly addressed in a timely fashion.

23. The Tribunal is not surprised therefore by the lack of any objection to the Application. The potential adverse cost consequences of delaying the completion of the roof repairs to allow for the consultation requirements to be fully worked through, once their need became apparent, is likely to have been clear to all.

24. The Tribunal is satisfied that Applicant has made out a compelling case that the roof repairs are necessary, appropriate and urgent.

25. In the absence of any written objections and having regard to the steps that have been taken, the Tribunal has concluded that the Flat Owners will not be prejudiced by dispensation being granted.

26. To insist now on the completion of the consultation requirements would be otiose.

27. For these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Annex A

The Residential Long leaseholders at The White House

Ms F Latif
Mr & Mrs SEA Senior
Mr & Mrs Parker
Mr RB Walla & Ms M Edge
Mr & Mrs White
Mrs AL Emmott
Mrs D Copeland
The Estate of Mr WM Forman
Mr & Mrs Emery
Mr SC Roberts