



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

**Case Reference** : **BIR/44UB/LDC/2023/0021**

**Property** : **Dovedale Court  
Orton Close  
Birmingham  
B46 1SY**

**Applicant** : **(1) Malcolm Carter  
(2) Susannah Segal**

**Applicant's Representative** : **Proxim Property Management  
(Christopher Duggan)**

**Respondents** : **The Various leaseholders of  
Dovedale Court  
16 – 38 (evens only) Orton Close  
Birmingham  
B46 1SY**

**Type of Application** : **An Application for the dispensation of all  
or any of the Consultation  
Requirements provided for by Section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Mrs K Bentley**

**Date of Hearing** : **26<sup>th</sup> February 2024**

**Type of Hearing** : **Paper Determination**

**Date of Decision** : **26<sup>th</sup> February 2023**

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**DECISION**

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## **Background**

1. By Application dated 5<sup>th</sup> June 2023, sent to the Tribunal on 5<sup>th</sup> July 2023, the Applicants, through their Managing Agents, Proxim Property Management, applied to the Tribunal for Dispensation from the Consultation Requirements imposed by Section 20 of the Landlord & Tenant Act 1985 ('the Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as Dovedale Court, Orton Close, Birmingham, B46 1SY.
2. The Application requested that the matter be dealt with on the Standard Track as the works had already been completed. It was considered that a paper determination would be appropriate. The Tribunal issued Directions dated 22<sup>nd</sup> September 2023.

## **The Facts**

3. The property at Dovedale Court, Orton Close, Birmingham, B46 1SY is understood to comprise of a block of twelve, purpose-built self-contained flats, split into two blocks.
4. The Applicants in this case are the Freeholders, represented by Proxim Property Management who manage the property and the Respondents are the various long leaseholders of the flats.
5. The Tribunal has been provided with a draft copy of the lease in respect of one of the flats and understands that there is no dispute between the parties that the works required are the responsibility of the Applicant and that the various Respondents contribute towards the cost through the service charge. Clause 5 of the lease provides for the Lessor to carry out the necessary maintenance works and Clauses 1 and 4 provide for the Leaseholders to pay a service charge in respect of the works detailed in Clause 5(1).
6. Clause 5(1) of the lease provides that the Underlessor covenants with the Underlessee as follows: -

*To repair and maintain and keep repaired and maintained the retained premises the drives and grounds at the front rear and side of the said block of flats the main structure of the said block of flats and the roofs and all external parts..... .*

7. The Tribunal has not carried out an inspection and the matter has therefore been determined on the papers provided to it by the parties. However, the Tribunal has inspected the exterior of the property on a satellite image.
8. According to the Application, work is required to renew roof tiles, roof battens and breather membrane to the area of the roof to the rear pitch of Flat 38 and above the front and rear pitch above flat 36 as both flats are experiencing heavy water ingress during rainfall damaging fixtures and fittings inside the property.
9. The Applicants state that as they also considered the water ingress to be a health and safety matter, they had arranged for the works to be carried out by Droitwich Roofing and Building Specialists Ltd, who had erected the scaffolding to the property and carried out the initial investigation work.
10. The Tribunal understands that the work has now been completed.

11. The Applicants confirm that they notified all the leaseholders in writing informing them of the problem with the water ingress, the proposed works and the loan made by the Applicant Freeholders to enable the work to proceed without delay.
12. The Tribunal has been provided with a copy of the invoice for carrying out the works in the sum of £21,500.00 plus VAT making a total of £25,800.00.
13. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements as the work has already been completed.
14. The Applicants submit that although they have not commenced the consultation process all the Respondent leaseholders are aware of the proposed works. This is evidenced by the letters sent to the various leaseholders by the Applicant.
15. The Directions issued by the Tribunal directed the Applicants to send to all the leaseholders a form which the Tribunal had requested each leaseholder to complete and return to it no later than 20<sup>th</sup> October 2023. This form asked the parties to confirm to the Tribunal whether or not they (a) supported the application for dispensation from full consultation for the works and; (b) agreed that the Tribunal may decide the matter on the basis of written representation only (no hearing).
16. The form also confirmed to the leaseholders that if they failed to return the form, the Tribunal would assume that the individual leaseholders did not oppose the dispensation application.
17. No response was received from any party.
18. The Tribunal understands, based on the Application and the Applicant's submission that the Application for Dispensation is sought:
  - a) Because the failure of the roof structure to areas above flats 36 and 38 was causing damage within the flat and;
  - b) The water ingress was also a health and safety issue.
19. The Tribunal infers from the submissions that if the full consultation process had been undertaken, the delay could result in greater potential damage and risk to the various leaseholders.
20. The Tribunal notes that the leaseholders have all been informed and had an opportunity to comment on the proposed works and costs but no observations objecting to the proposed works were received. The Tribunal therefore infers that none of the leaseholders are opposed to the proposed works and that they all support them.

### **The Law**

21. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250.00, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
22. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250.00 from each of the leaseholders unless he obtains a dispensation from

a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).

23. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application to grant dispensation may be made before or after the commencement of the works.

### **The Tribunal's Decision**

24. It is evident to the Tribunal that the work was urgent. The roof is leaking and the water ingress was causing damage within flats 36 and 38.
25. It is also evident to the Tribunal that if the full consultation process had been followed then the works would have been delayed which would undoubtedly have resulted in more damage and possibly additional health and safety issues to the detriment of the leaseholders.
26. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult. Indeed, they would, in the Tribunal's view, be significantly prejudiced if the work was delayed.
27. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should resolve the problem of the leaking roof.
28. The Tribunal is also influenced by the fact that none of the Respondents have made any submission to the Applicant or, more importantly to the Tribunal opposing the Application.
29. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.
30. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

### **APPEAL**

31. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS.  
Chairman.  
First-tier Tribunal (Property Chamber)