



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

Case Reference	: MAN/ooBR/LDC/2023/0040
Property	: 33 Duke Street, Lower Broughton Estate, Salford, Greater Manchester M7 1PR
Applicant	: Countryside Properties Land (One) Limited Countryside Properties Land (Two) Limited
Applicant's Representatives	: Contour Property Services
Respondents	: The Residential Long leaseholders at the property referred to in the schedule hereto
Type of Application	: Landlord and Tenant Act 1985 – s 20ZA
Tribunal Members	: Judge J.M.Going S.D. Latham MRICS
Date of Decision	: 16 April 2024

DECISION

The Decision

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

Preliminary

1. By an Application dated 12 June 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 investigative roof works which had been carried out at the property (“the investigative works”).
2. The Tribunal issued Directions on 15 December 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 agents Contour Property Services (“Contour”) provided a bundle of documents including a statement of case, a copy of a registered lease (“the sample Lease”), copies of letters dated 8 June 2023 sent to each of the Respondents (“Flat Owners”) and various Notices issued to each in respect of the consultation undertaken in relation to the proposed subsequent remedial works.
4. None of the Flat Owners has indicated to Contour or the Tribunal any objection to the Application itself, beyond the representations more particularly referred to later in this Decision.

The facts and background to the Application

5. 33 Duke Street has not been inspected by the Tribunal but is described by Contour in the Application as being “located on the Lower Broughton Estate, Salford, a residential scheme comprising low rise blocks of multiple occupancy, houses and shopping parade”. It “comprises of 13 individual self-contained flats within a three-storey block beneath a flat sedum living roof”. The Tribunal has also been able to gain useful insights from Google’s Street view and satellite images.
6. It is understood, from the sample Lease, that each Flat Owner owns a flat, or flats, within the block under a long-term lease, ending on 31 December 2257, and is due to pay through the service charges a proportion of the costs of, inter alia, keeping the structure and roof in good repair and condition.

7. Contour, which is understood to have been recently amalgamated within Onward Homes, explained in the Applicant's statement of case that:- "The property has had a significant problem with water ingress via the flat roof, gullies, and parapet walls..... there was further... water ingress within the communal area on the second floor.... captured via.. buckets ... emptied on a daily basis.

The water ingress caused structural damage to the internal areas, as well as damp issues within some apartments. It has also resulted in mould growth.... and needed immediate action to remove the same.

.... Contour... commissioned a report to.... identify the cause.

For the independent party "Sika" to assess the conditionit was necessary for the sedum roof to be removed..... This was a significant exercise due to the volume of soil and vegetation and the complexities of carrying out work of this nature at height, and also the disposal of soil and vegetation.

.... The total cost of these works are £23,319.51 which equates to £1,793.81 per Leaseholder.

The works referred to....were completed during the week commencing the 24 March 2023.

Sika attended the site on the 3 April 2023, and confirmed within the body of the report the following:

- The existing single ply membrane is generally in poor condition and is now reaching the end of its service life.
- The existing cladding has failed and needs replacing.
- The cappings to the parapets are to be removed and the coating taken to the outside edge with a new trim.
- Any existing penetrations must be inspected to determine their suitability to receive any new system and must be prepared, repaired, or replaced as necessary prior to the installation of the specified system.
- The existing drainage outlets will need to be lowered to allow efficient drainage from the roof.

Sika recommended that the existing green roof ... be stripped off back to the single ply layer, adhesion tests ... carried out prior to the single ply being coated in Decothane Ultra 20 waterproofing.

Decothane is a cold applied, one component, seamless, highly elastic, UV stable and moisture triggered polyurethane membrane. It cures to form a seamless, durable, and weather-resistant water proofing solution for exposed roof areas.

..... Contour ... contacted all Leaseholders providing an update on the roof issues ... by way of letter on the 8 June 2023, and also informing them of its intention to apply to the ... Tribunal for Section 20 Dispensation in relation to the Investigatory works".

8. A copy of the letter was exhibited together with the subsequent Notices required by the consultation requirements (as referred to below) in respect of the proposed remedial works.

9. Contour has confirmed that no written observations were received from any of the Flat Owners within the timescales set by the Stage 1 Notice, dated

14 June 2023, and nor did any of the Flat Owners propose or nominate any alternative contractors for the proposed remedial works.

10. A Stage 3 Notice relating to the proposed remedial works was served on 1 November 2023, and various observations were received from different Flat Owners.

11. The final Stage 4 Notice was served on 24 January 2024.

12. None of the evidence has been disputed.

13. 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.

14. The only representations received by the Tribunal were copies of email from Mr Basra to Contour dated 20 February 2024, attaching copies of "all the emails exchanged with you – Onward Home/Contour Properties/Jordan Fishwick Estate Agent/Salford Council/ your contractor (Steve)/Sedgwick Gallagher insurance and Mr John Morgan – loss adjuster since September 2022 when the first signs of leaks appeared" attesting to the damage suffered by flats 8 and 11, consequently not being able to let or sell one of them, having to reduce the rent for the other, and his ongoing financial losses.

15. The Tribunal convened on 11 April 2024 to determine the Application.

The Law

16. 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 leaseholder in respect of a set of qualifying works.

17. 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 leaseholder 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 leaseholders 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 leaseholders or the association.

- Stage 3: Notices about estimates

The Landlord must supply leaseholders 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 leaseholders 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 leaseholders 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 leaseholders' nominee.

18. 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.”

19. 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 leaseholders 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 to ensure the leaseholders 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 leaseholders 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 leaseholders;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that leaseholders had suffered prejudice;
- Once the leaseholders have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the leaseholders' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the leaseholders' reasonable costs incurred in connection with the dispensation application;
- Insofar as leaseholders 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 leaseholders fully for that prejudice.

The Tribunal's Reasons and Conclusions

20. 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).

21. 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.

22. 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 respect of the investigative works.
- The Application is restricted to the investigative works and does not relate to the subsequent proposed remedial works.
- 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 investigative 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)....”

23. 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 the failure by the Applicant to complete its compliance with the consultation requirements in respect of the investigative works.

24. 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 those works.

25. The Tribunal finds no evidence of any actual or relevant prejudice to the Flat Owners from the failure to complete the consultation requirements in respect of the investigative works; there is no evidence that any dispute or have disputed the need for the investigative works or sought to nominate a different contractor.

26. The Tribunal accepts that where leaks occur there is always inevitably a degree of urgency. Clearly, and as graphically detailed in the emails supplied by Mr Basra, there are immediate and continuing 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 and losses if such problems are not properly addressed in a timely fashion.

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

28. The Tribunal is satisfied that Applicant has made out a compelling case that the investigative works themselves were necessary, appropriate and, certainly by the time that they were instigated, urgent.

29. In the absence of any written objections to the Application 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.

30. To insist now on the completion of the consultation requirements in respect of the investigative works would serve no practical purpose.

31. For these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in respect of the investigative works, unconditionally.

32. Nevertheless, and as has been confirmed, this Decision relates solely to the Application and the investigative works. Nothing within it, should be taken as an indication that the Tribunal considers that any service charge

costs resulting from the investigative works (or for that matter the proposed remedial works) are reasonable or indeed payable or, removes the parties' right to make a further application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 in respect of such matters, should they feel it appropriate.

The Schedule hereinbefore referred to: –
The Respondents

1. Mr Ziraba & Ms Meyer
2. Mr Ahmed
3. Ms Antoine & Mrs Joseph
4. Mr Basra
5. Mr Basra
6. Mr Jarrett
7. Ms Mullan & Ms Lopez Castro
8. Mr Amin
9. Mr Sandford
10. Mr Zumkeller
11. Sandman Investments Limited
12. Mr Barker