



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

Case reference : **CAM/00KB/LDC/2024/0005**

Property : **Flats A-H, 32 Clapham Road,
Bedford MK41 7PP**

Applicant : **Clapham Road Freehold Limited**

Respondents : **The leaseholders**

Type of application : **For dispensation of the
consultation requirements under
section 20ZA Landlord and Tenant
Act 1985**

Tribunal member : **Judge K. Seward**

Date of decision : **22 April 2024**

DECISION AND REASONS

Decision of the Tribunal

The Tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in respect of emergency repair works to the roof dormers at the Property.

REASONS

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 of consultation requirements in respect of certain “qualifying works” (within the meaning of section 20ZA).
2. The Applicant is the landlord of 32 Clapham Road, Bedford (“the Property”), being 8 separate flats within a converted and extended house.
3. It is set out in the application form that scaffolding was erected to examine the roof when the landlord was notified of water penetration causing damp, damage and mould to one of the flats. Upon inspection, the roof needed to be stripped to establish the full extent of the defects. Once stripped, greater damage than anticipated was discovered resulting in costs exceeding the section 20 limit.
4. The Respondents are the leaseholders of the flats in the Property who are potentially responsible for the cost of the investigatory and repair works under the terms of their lease.
5. By virtue of sections 20 and 20ZA of the 1985 Act, any relevant contributions of the Respondents through the service charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation) (England) Regulations 2003 were: (a) complied with; or (b) dispensed with by the tribunal. In this application the only issue is whether it is reasonable to dispense with the consultation requirements.
6. **Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under section 27A of the 1985 Act to determine the payability of any service charge under the lease.**

Procedural history

7. The application is dated 24 January 2024. Directions were issued by the Tribunal on 6 February 2024. In accordance with those Directions, the Applicant has confirmed by letter dated 14 February 2024 that (i) the application form (ii) a brief description of works, and (iii) an estimate of the costs, were sent by first-class post to all Respondents on that same day. Copies of the letters to all leaseholders are supplied.
8. The Directions gave those leaseholders who oppose the application until 1 March 2024 to respond to the Tribunal by completing and returning a reply form. At the same time, any leaseholder in opposition would need to send to the landlord a statement in response to the application with a copy of their reply form and copies of documents relied upon. The Applicant provided further confirmation that a copy of the Directions with reply form were also sent to all Respondents.
9. No response or objection was submitted by the Respondents within the allotted timescale. It was not until 12 March 2024 that one of the Respondents raised some questions over the application and subsequently suggested they had not been served with all the documents to give opportunity to respond. However, the Tribunal is satisfied that all Respondents were served with the documents required.
10. The Applicant landlord was required by the Directions to prepare a bundle containing all the documents on which reliance is placed. A paginated bundle of some 77 pages was submitted to the Tribunal. This includes the application, the Tribunal Directions, correspondence, works specification, invoice, colour copy photographs of the roof with works in progress, and a copy of a specimen lease.
11. The Directions said that the Tribunal would determine the application based on written representations unless any party made a request for an oral hearing by 27 February 2024. No such request was received.
12. On reviewing the documents, the Tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary. Therefore, this application has been determined by the Tribunal on the papers based on the information supplied by the Applicant.

The law

13. 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.'

14. 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 clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate. He went on to state *'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

15. For the following reasons the Tribunal finds that there is sufficient evidence of urgency, that dispensation is justified, and an absence of evidence of prejudice.
16. The Applicant has given reasons for seeking dispensation. It starts by explaining how it was initially thought that the cost of repairs would be below the section 20 limit. Once the roof was stripped, it became apparent that it was not possible to delay repairs without compromising the health and safety of the occupiers. The Applicant considered that emergency action was necessary due to the risk to occupiers and the potential for significant further damage to the interior of the Property.
17. During these proceedings, the leaseholders have been informed by the Applicant landlord that the works identified were quite extensive and "beyond that which was evident from the outside." The estimated cost of the emergency works was given as £6,500. The invoice from 'DLM' dated 14 January 2024 for labour, clearance and materials is £6,625.00.
18. It can be seen from the copy photographs supplied that the Property has a pitched tiled roof inset with flat roofed box dormers. The photographs show that the felt covering had perished on one (rear) roof dormer with rotten timber visible and an exposed gap towards the outer edge. Once stripped back, it is plain to see from the water stains that there had been significant water ingress and damage caused to the boarding of the dormer. The roof covering and timber of another wider dormer (the mid dormer) similarly appeared to be in poor condition. Photographs of the completed repairs works are also provided.
19. The Applicant has supplied an undated specification of roof works. This lists the tasks as including the erection of scaffolding, examination of the dormers and undertaking all necessary repairs to ensure long term repair and to prevent any further water ingress.

20. The 'job description' in the contractor's invoice itemises the works undertaken. They involved the supply and erection of scaffolding, supply of a skip "strip first dormer and remove rotten decking" and "remove rotten fascia". New boards were installed, and the end three rafters were reinforced as the ends were rotten. New black fascia at the front and sides was installed, along with renewed soffit and new guttering. New timber rails were fitted and high performance felt. The invoice also records that the middle and 3rd dormer also needed complete overhaul with approximately 6m of felt and rotten decking stripped and renewed, as before. The waste was then removed from site.
21. As a result of these and other lesser roof repair costs, a complete roof refurbishment is intended, which will be subject to the section 20 consultation process "later in the year". The application for dispensation is confined to the emergency roof works.
22. The reasons given in the application are quite brief. They lack detail on the nature and extent of damage experienced inside the Property that prompted the Applicant to conclude that there was a health and safety risk requiring immediate remedial action. Nevertheless, I am mindful that no-one has contested the urgency of the works. Notably, there are photographs to illustrate water ingress to the boarding of one dormer. Compliance with the section 20 consultation requirements would have caused delay, potentially allowing water penetration to worsen over the winter months.
23. On the information submitted by the Applicant, and in the absence of any objections or submissions from the Respondents, the Tribunal is satisfied that the qualifying works were necessary and urgent. As the Respondents have raised no objection to the works, the Tribunal finds no evidence that the Respondents would suffer prejudice if dispensation were to be granted.

The Tribunal's decision

24. 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*". In the circumstances set out above, the Tribunal considers it reasonable to dispense with the consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.
25. 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 of the work and/or whether any service charge costs are reasonable and payable.
26. There is 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 should any costs be charged to the leaseholders.

27. It is the responsibility of the Applicant to serve a copy of this decision on all respondents.

Name: Judge K. Seward Date: 22 April 2024

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).