



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

<b>Case reference</b>	:	<b>CAM/12UB/LDC/2023/0061</b>
<b>Property</b>	:	<b>Flats 8-12, Parkside 35, Cambridge CB1 1JE</b>
<b>Applicant</b>	:	<b>The Master (or Keeper) and Fellows of Peterhouse in the University of Cambridge</b>
<b>Representative</b>	:	<b>Encore Estate Management Limited</b>
<b>Respondents</b>	:	<b>The leaseholders</b>
<b>Type of application</b>	:	<b>For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985</b>
<b>Tribunal member</b>	:	<b>Judge K. Saward</b>
<b>Date of decision</b>	:	<b>30 January 2024</b>

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**DECISION AND REASONS**

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**Description of determination**

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents comprise an indexed and paginated bundle of some 99 pages from the Applicant. It includes the application form, letters sent to the leaseholders regarding the application, an investigation report, quote, and a copy of a specimen lease. The contents of all these documents are noted.

The order made is described below.

## **Decision of the tribunal**

- (1) The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of works to identify and repair the cause of the leak(s) into Flat 11 from the external terrace above.

## **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 Parkside 35, Cambridge (“the property”), being a block of 5 purpose-built flats numbered 8 to 12.
3. 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.
4. The qualifying works are described in the application as including stripping the balcony terrace, investigations to identify the leak(s) and any further defects to the balcony terrace structure, and repair work following identification of the roof leak(s) from the terrace. The intention is to complete investigations and repairs under one scheme of works.
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 etc) (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.

## **Paper determination**

7. A copy of a specimen lease has been supplied. The demise is 'the Apartment' which is defined to include 'the surfaces of any external terrace or balcony of the Apartment.' The demise excludes the roof, the roof space and any airspace above, the foundations, all external, structural or loadbearing walls, columns, beams, joists, floor slabs and supports of the Buildings, the partitions or walls of any external terrace separating the Apartment from any other premises and the external terrace or balcony (if any) other than the aforementioned part. These retained parts are the responsibility of the landlord to repair.
8. Subject to the tenant paying the service charge and observing their obligations under the lease, the landlord covenants to use all reasonable endeavours to procure provision of the Services. The Services include repairing, and whenever the landlord, acting reasonably, regards it as necessary in order to repair, replacing or renewing the retained parts on the building.
9. Provision is made requiring the payment by the leaseholder of a fair and reasonable proportion of the Service Costs. This means the costs and expenditure to be paid or incurred by the landlord in respect of, or incidental to, all or any of the Services or otherwise required by the landlord in its reasonable discretion. The exception is where the cost and expenditure is recovered from any insurance policy effected by the landlord pursuant to the lease.
10. The application is dated 15 December 2023. Directions were issued by Judge Wayte on 21 December 2023. The tribunal served the application and directions on the leaseholders by letters dated 22 December 2023. The directions gave those leaseholders who oppose the application until 12 January 2024 to respond to the tribunal by completing a reply form and returning it to the tribunal. 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.
11. No response or objection has been submitted by the respondents who have taken no active part in this application.
12. The directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. A bundle was submitted to the tribunal and each leaseholder, as required. The directions provided that the tribunal would determine the application based on written representations unless either party made a request for an oral hearing by 12 January 2024. No such request was received. Therefore, this application has been determined by the tribunal 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, having 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, 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 of fact**

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 gives the reasons that follow for seeking dispensation.
17. It is explained that ongoing internal damage is being caused to Flat 11. Every time it rains there is potentially further damage to the structure of the balcony terrace. The applicant considers the works are necessary to proceed without delay to ensure the freeholder is maintaining their covenants within the lease. An insurance claim for the structural damage to the balcony terrace was declined on the basis that the terrace covering is nearing the end of its serviceable life but is not yet defunct.
18. It is submitted that no other viable option remains but to recover the costs of the remedial investigations and repair works through the service charge.
19. A contractor attended site on 9 November 2023 to investigate the cause of water ingress through the lounge ceiling of Flat 11. During the investigation, an access hole was cut through the ceiling in the vicinity of the water ingress. The 'investigation report' concludes that 'this proved the water is originating from the balcony/terrace above and entering the property through the joints in the concrete floor planks.'

20. Due to restricted access on the balcony/roof area, the contractor recommended that an access scaffold is required to allow safe access for the roof to be stripped, cleaned and electric tested to identify any defects and allow determination of the remedial works required. The quoted cost of investigative works, as at 17 November 2023, was £3,850 plus VAT
21. Leaseholders were advised of the outcome of the investigation report by letter dated 8 December 2023 from the landlord's representative. They were informed that temporary repairs could not be undertaken due to the exact location of the leak being unidentifiable and that further investigations are required. The investigation and remedial works are expressed to require urgent attention due to the 'upcoming forecast of rainfall'. The quoted price of £3,850 plus VAT to conduct further investigations is given and it is highlighted that the assessed cost exceeds the section 20 limit of £250 per property.
22. On 14 December 2023 further letters were sent to leaseholders on behalf of the landlord to advise them that the application for dispensation would shortly be submitted. Thereafter the contractor would be instructed to schedule the further investigatory works with temporary scaffolding erected.
23. Correspondence sent to leaseholders on 24 January 2024 advised that the contractor has erected scaffolding within the external communal area to access Flat 11. Investigations to identify any holes or defects within the balcony area were already underway. The application for dispensation is now therefore partly retrospective in nature.
24. Given the ongoing water penetration to Flat 11, there is plainly an imperative for the cause of the water ingress to be identified and remedied. Compliance with the section 20 consultation requirements would be liable to cause delay with serious risk of damage escalating.
25. 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 are 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**

26. 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*".

27. 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.
28. 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.
29. 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.
30. It is the responsibility of the applicant to serve a copy of this decision on all respondents.

**Name: Judge K. Seward**

**Date: 30 January 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).