



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : CAM/00JA/LDC/2023/0055

Property : Barn Close, Werrington, Peterborough,
PE4 6LB

Applicant : Longhurst Group

Representative : Sarah Campbell-Barker, Leasehold
Services Manager for Longhurst Group

Respondents : The Leaseholders

Representative : Not Applicable

Type of application : For dispensation under section 20ZA of
the Landlord & Tenant Act 1985

Tribunal member : Tribunal Judge B MacQueen

Date of decision : 26 January 2024

DECISION

Decision of the Tribunal

1. The Tribunal determines that it is reasonable for the Applicant to dispense with the consultation requirements in relation to the works for the reasons set out in this decision.

Introduction

2. The Applicant sought an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation of the consultation requirements in respect of remedial works to replace a roof for properties numbering 1-4 Barn Close, Werrington, Peterborough that is beyond repair. The works included removing old existing clay roof tiles, ridge tiles and timber battens in the main roof, then replacing these with new breathable felt membrane, new timber battens, new lead work to valleys and dormer cheeks, repointing gable ends and installing a new ridge with a dry ridge system. There was a risk to health and safety of the occupiers if the works were not completed and this was particularly true for the occupier of number 4 Barn Close because cement from the side of the roof tiles was crumbling and falling to the ground causing a hazard. Additionally gaps and holes in the roof meant that rainwater would cause further damage to the roof which could lead to damp and mould.

3. The Applicant is the Landlord of the Property, and the Respondents are the Leaseholders.

4. A bundle of documents totalling 54 pages was provided by the Applicant. This included a condition report from a roofing contractor and the Longhurst Group Surveyor which recommended the work needed, two quotations for the work, a copy of the letter sent on behalf of the Applicant to Leaseholders which explained the reason for the application, a specimen copy of the lease, and financial information including accounts for year end 31 March 2023, Barn Close bank statement and Barn Close sinking fund.

5. The Applicant's statement at page 16 of the bundle detailed the work that was required and confirmed that there were sufficient funds in the

sinking fund for the works to proceed without having to additionally invoice Respondent Leaseholders. The application form confirmed that the roof replacement work was scheduled to be carried out in the next financial year but had been brought forward due to the urgency, health and safety risk and further potential damage to the Property.

6. The letter sent to Leaseholders dated 12 December 2023 (page 24 of the bundle) explained that urgent work was required to the roof at 1-4 Barn Close. A further letter was sent to the Leaseholders on 21 December 2023 to clarify that the estimate for lift replacement £105 361.18 was included in error and does not form part of this application.
7. Within the application form (page 7 of the bundle), the Applicant stated that dispensation from the requirements to consult tenants before work was commenced was sought so that the roof could be replaced as quickly as possible. The Applicant also confirmed that the Leaseholders were aware that the work was needed and that the Leaseholders were keen for the works to commence because of the winter weather.
8. On 2 November 2023, the Applicant made this application for retrospective dispensation. The Applicant also stated that the works had been started/carried out due to their urgent nature.
9. On 4 December 2023, the Tribunal issued Directions. The Applicant was directed to send to each Respondent Leaseholder a copy of the application and the Tribunal's Directions.
10. By email dated 21 December 2023, Sarah Campbell-Barker, Leasehold Services Manager for the Applicant and responsible person confirmed

that the application had been sent to Respondent Leaseholders on 14 December 2023 by Royal Mail's special delivery service. Included in the bundle at page 25 was a list of the postage tracking numbers that related to each property.

11. The Respondents were directed to notify the Applicant and the Tribunal if they objected to the application by 12 January 2024.

12. None of the Respondents has objected to the application.

Relevant Law

13. This is set out in the Appendix annexed below. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable, or the possible application or effect of the Building Safety Act 2022.

Decision

14. The Tribunal's determination took place without parties attending a hearing, in accordance with the Tribunal's Directions. This meant that this application was determined on 26 January 2024 solely on the basis of the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.

15. The relevant test to be applied is set out in the Supreme Court decision in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were

protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no financial prejudice in this way.

15. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the overall works. As stated in the Directions order, the Tribunal was not concerned about the actual cost that has been incurred.
16. The Tribunal was satisfied that the Respondents have been properly notified of this application and had not made any objections.
17. Accordingly, the Tribunal granted the application for the following reasons:
 - (a) The Tribunal was satisfied that the nature of the works had to be undertaken by the Applicant sooner rather than later and noted in particular that material was falling from the roof causing a hazard, and gaps and holes in the roof would allow water to ingress into the roof.
 - (b) The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it was likely that there would be delay.
 - (c) The Tribunal was satisfied that the Respondents have been kept informed of the need, scope and estimated cost of the proposed works.
 - (d) The Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them. The Tribunal noted that the roof repairs were scheduled works for the next

financial year in any event but have been brought forward because of the urgency.

(e) Importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act.

18. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.

19. It should be noted that in granting this application, the Tribunal made no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge
Bernadette MacQueen Date: 26 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount, which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and

- (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

- (1) Where an application is made to a leasehold valuation 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.