



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

Case Reference : **LON/00AP/LDC/2024/0013**

Property : **31 Granville Road, Wood Green,
London, N22 5LP**

Applicant : **Paul Harris
Jane Harris**

Representative : **None**

Respondents : **Roxana Tiseanu
Constantin Tiseanu**

Representative : **None**

**Type of
Application** : **An application under section 20ZA of
the Landlord and Tenant Act 1985 for
dispensation from consultation prior to
carrying out works**

Tribunal Members : **Mr I B Holdsworth FRICS MCI Arb**

**Date and venue of
Hearing** : **3 April 2024 at remote venue**

Date of Decision : **3 April 2024**

DECISION

Decisions of the Tribunal

The Tribunal determines that retrospective dispensation should be given from the consultation requirements in respect of the specific works undertaken to replace the roof covering (defined as the “Roof Works”) at 31 Granville Road, Wood Green, London, N22 5LP as required under s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for the reasons set out below.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) to retrospectively dispense with the statutory consultation requirements associated with carrying out necessary roof repair works, “**the Roof Works**”, to “**the property**”.
2. An application was received by the First-tier Tribunal dated 17 January 2024 seeking dispensation from the consultation requirements. Directions were issued on the 1st February 2024 to the Applicant. These Directions required the representatives for the Applicant to advise all Respondents of the application and provide them with details of the completed works.
3. The relevant legal provisions are set out in the Appendix to this Decision.

The hearing

4. This matter was determined by written submissions. There was no request from either party for a video or face to face hearing. The Applicants submitted a bundle of relevant materials to the Tribunal.
5. A written submission is received from the Respondents and the Applicants made a response on relevant matters.

The background

6. The property which is the subject of this application is a two bedroomed ground floor flat in a building which comprises two residential flats with garden. The two flats are known as 31/33 Granville Road and the Roof Works relate to the roof above the two premises.
7. Paul and Jane Harris, the landlords, explain in their Statement of Case at page 23 of the bundle that water ingress through a defective roof covering had been a recurring problem over the last 20 years. Several attempts were made to remedy the defect over this period through repair and partial renewal but they had failed to remedy the problem.

8. A roof leak in January 2023 necessitated erection of scaffolding and a further repair. The contractors instructed to carry out this repair advised that the roof covering was failing and needed complete renewal. The in-situ scaffolding enabled any bidding contractors to close inspect the roof prior to quoting for the work. So the landlord sought a quotation for the Roof Works from Bird and Wedge the instructed contractor and two further roofing contractors. The Applicants claim they invited the leaseholder to obtain and submit a contractor quote at this time. The leaseholder did not respond to this suggestion.
9. The landlord secured three quotes for the Roof Works that ranged in price from £14,600-£26,500 exclusive of VAT. These were advised to the leaseholder of Flat 31 by e mail dated 11 April 2023. No response was received from the leaseholder following these works prices being revealed. We are told on 12 April 2023 the leaseholder told the landlord that he intended to refuse to engage about roof repair works until completion of a lease extension to the property.
10. After further water ingress to the property in early November 2023, the least cost quotation issued by the Roofing Company Enfield Limited was accepted by the landlord and the contractor was instructed to undertake the repairs. The Tribunal understand the Roof Works were completed in November 2023.
11. The Applicant contends that the repairs were needed urgently for the following reasons:
 - Rainwater was penetrating flat 31 and this posed a health and safety risk to the tenants.
 - Any delay in rectifying the rainwater leak could have led to further damage to the building, particularly to the ceiling and roof joists areas above flat 33. Photographs are included in the bundle that illustrate the existing ceiling damage; and
 - Further delay to undertaking the Roof Works was likely to increase the probability of consequential damage to the remainder of the property.

Statutory Duties to Consult

12. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.

13. The Landlord is obliged to serve leaseholders and any recognised Tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.
14. Section 20ZA (1) of the Act provides:

“ 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 or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”
14. This determination relies upon a 100 page bundle of papers which included the application, the Directions, a Statement of Case and supporting documents.
15. The bundle contains a detailed works justification, a description of the works and a confirmed cost quotation.
16. The Supreme Court’s decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the Tribunal’s jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
17. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
18. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder’s ability to make observations, nominate a contractor and or respond generally.

19. The burden is on the landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
20. The Tribunal is satisfied that the works are of an urgent nature, and they are for the benefit of and in the interests of both landlord and leaseholders in the Property.
21. The Tribunal note that the leaseholders of Flat 31 objected to the grant of dispensation. The written submission and objection are at pages 36-37 of the bundle. This submission fails to identify the prejudice caused by lack of consultation and it is incumbent on any objector to satisfy this requirement. Some of the matters raised in the leaseholder's submission speak to whether the roof repair costs are reasonable.
22. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.
23. The Tribunal notes a brief works description is available for review at page 100 of the submitted bundle and this is provided with works price quotations from three contractors. The works quotations are provided on an e mail at page 30 of the bundle. The Tribunal accepts that the residents and leaseholder of flat 31 suffered a reduced period to comment on the quotations or consult prior to commencement of the roof works scheme. However, it is not apparent any response was received following the landlord's e mail to Mr Tiseanu on 11 April 2023 in which the roof repair cost quotes from the roofing contractors are presented. This was an opportunity for leaseholders to comment on the results of the received quotations, works specification, contractor selection and any other relevant matters. This was not done.
24. The Tribunal are not persuaded an extended consultation period in accordance with Section 20 procedures would have produced a different commercial outcome. For this reason, the Tribunal are unable to identify any financial prejudice to the leaseholders due to the failure to consult at this time.
25. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted in accordance with the timetable afforded by the 2003 Regulations. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, with a reduced opportunity to make observations and to comment on the works or to nominate a contractor, were likely to suffer any relevant prejudice.

26. The Tribunal having considered the evidence is satisfied that it is reasonable to retrospectively dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are retrospectively dispensed in respect of the Roof Works described in the Works Quote dated 27 February 2023, to be undertaken by The Roofing Company Enfield to remedy the defects with the defective roof covering at the Property, subject to these works falling under the Landlord's obligations under the leases of the flats.

Chairman: Ian B Holdsworth, Valuer Chairman

Dated: 3 April 2024

Appendix of relevant legislation

Section 20 of the Act

- (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) a leasehold valuation 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.

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).