



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

Case Reference : **LON/00BE/LDC/2022/0151**

Property : **Swan Street (Berwick Court and 7 blocks adjacent) London SE1 1 BG etc.**

Applicant : **Berwick Court Management Company Ltd.**

Representative : **Warwick Estates Ltd.**

Respondents : **106 Leaseholders of flats in Berwick Court and 7 blocks adjacent at Swan Street.**

Representative : **None**

Landlord : **Coroscoba Limited**

Type of Application : **S20ZA of the Landlord and Tenant Act 1985 - dispensation of consultation requirements**

Tribunal : **N. Martindale FRICS**

Hearing Centre : **10 Alfred Place London WC1e 7LR**

Date of Decision : **18 October 2022**

DECISION

Decision

1. The Tribunal grants dispensation from the requirements on the applicant to consult all leaseholders under S.20ZA of the Landlord and Tenant Act 1985, in respect of the qualifying works in this application, only. Dispensation is granted on terms, as set out at the conclusion.

Background

2. The landlord through its managing agent applied on 12 August 2022 to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”). The application was for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application related to the failure of various elements of the main roofs on a number of the blocks. Extensive works were required as a matter of urgency to prevent water ingress to common parts and/or a number of leasehold flats through a range of leaking elements of the roof.
4. At the date of application it was stated that work had commenced. It was understood that the landlord’s agent was able to recharge costs under the service charge provisions to all flats in the Property to all leaseholders.

Directions

5. Directions dated 24 August 2022 were issued by Tribunal Chair Harris, without an oral hearing. These directed for various actions to be undertaken by the applicant and respondents if any, to reply, within a timetable.
6. By 5 September 2022 the applicant landlord was to send to each potential respondent a copy of the application, a brief and clear description of the scope of the works for which dispensation was to be sought. The estimated price of the works and of the fees of professional advisers with a set of these Directions. Finally the applicant was by 8 September 2022 to certify by letter to the Tribunal that these had all been completed and the date when.
7. By 19 September 2022 any respondent leaseholders had to send a standard reply form (attached to the Directions) to the Tribunal and the landlord and attach a copy of their statement of any evidence and other documents to which they wished to refer.
8. By 3 October 2022 the applicant landlord was to prepare the bundle sending a copy to the Tribunal and to each respondent leaseholder who opposed the application. The bundle was to include; the application form,

- Directions, the notification sent to the leaseholders, a standard sample lease, a copy of all responses and letter of confirmation on completion of these tasks.
9. In the event, the Tribunal did not receive any requests for a hearing, nor did it receive any forms from potential respondents either supporting, or objecting to the application.
 10. The Tribunal determined the case on the paper bundle received from the applicant. The Directions appear to have been largely followed by the applicant. Correspondence from the landlord was dealt with by their managing agent signed off by the applicant, the landlord's agent.

Applicant's Case

11. The Property appears to consist of 8 adjacent and co-joined modern post 2000, blocks of flats some 105No.. Fundamental and extensive defects had been disclosed and failure appeared to be extensive to include all blocks.
12. former detached Edwardian House since converted in the 1970's into 5 self contained flats. The accommodation is on 3 levels. All flats appear to be let on essentially identical leases. A sample flat lease was included the bundle.
13. In the application form at box 7 it confirms that these works are to be qualifying works and, that they had been started. At Box 8 in reply to the question "*Do you know of any other cases involving either (a) related or similar issues about the management of this property; or (b) the same landlord or tenant or property as in this application ?*" Reference is made "*LON/OBE/LDC/2020/0118 This was also for roof work/ external defects at the same development.*"
14. At box 9 the applicant was content for paper determination and applied for it, marking at box 10, but asked it could be dealt with by '*Standard Track*'. It was not considered urgent.
15. The application at box '*Grounds for seeking dispensation*', was completed. At 1, the applicant stated that following failures to the ridge tiles, slates, mastic and leadwork to various elements works were required to the blocks: Berwick, Kittiwake, Skylark.
16. At 2, the applicant confirmed that they had carried out no prior consultation with leaseholder but planned to write an explanatory letter to leaseholders during the application process.

17. At 3, the applicant explained that the earlier S.20ZA are incorrectly sought dispensation from consultation. Presumably it was wrongly assumed by the management company that costs for the 3 blocks would be recharged to all 8 blocks and thus fall under the annual limit of £250 for works costs.
18. The application included a cost schedule matrix dated 16 February 2022 entitled “*Roof Remedials and Works Matrix*” and “*Rev 10*”. The note of 26 September 2022, prepared by the building surveyor for the applicant (Trevaskis Consulting Chartered Surveyors) for leaseholders, since explained that a mini tender had been carried out between an initial contractor Highview and the later contractor SJS. As a result SJS was engaged to complete the works.

Respondent’s Case

19. The Tribunal did not receive any representations from the leaseholders either in support of or raising any objection, at any time during the application process.

The Law

20. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord’s costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
21. Dispensation is dealt with by S.20 ZA of the Act which provides:-
“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.”
22. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Decision

23. The scheme of the provisions is designed to protect the interests of leaseholders and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
24. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
25. The correspondence showed that the applicant complied generally with Directions. No representations to the application were received by the applicant nor by the Tribunal either within or beyond the relevant submission date for such.
26. The terms of this dispensation are:
27. That the total sum (plus any VAT due) to be recovered from all leaseholders at the Property where these subject qualifying works and any variations on them, will not be in excess of the costs stated in the document dated 16 February 2022 entitled "*Roof Remedials and Works Matrix*" and "*Rev 10*". This dispensation does not determine what service charges are reasonable and payable by any leaseholder under the lease, as a service charge for these capital works, just the cap.
28. This dispensation does not extend to any other works at the Property. This is because they do not form part of this application.
29. **In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act; in this case, on terms.**