



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

**Case Reference** : **CAM/38UF/LDC/2024/0015**

**Property** : **Bliss Mill, Worcester Road, Chipping Norton,  
Oxfordshire OX7 5JR**

**Applicant** : **Bliss Mill Management Limited**  
**Managing Agent** : **Proxim Property Management**

**Respondents** : **The Long Leaseholders of the 35 Apartments  
in the Main Mill Building**

**Type of Application** : **To dispense with the consultation  
requirements referred to in Section 20 of the  
Landlord and Tenant Act 1985 pursuant to  
Section 20ZA**

**Tribunal** : **Judge JR Morris**

**Date of Application** : **11<sup>th</sup> March 2024**  
**Date of Directions** : **19<sup>th</sup> March 2024**  
**Date of Decision** : **20<sup>th</sup> May 2024**

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**DECISION**

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**Decision**

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
2. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Respondent Leaseholders.

## **Reasons**

### **The Application**

3. An Application for dispensation from the section 20 consultation requirements in respect of qualifying works to investigate and remediate rainwater ingress into Apartment 4 of the Main Mill Building.
4. The Property was described in the Application as being a Grade II\* listed tweed mill converted into 46 leasehold properties comprising: -  
35 Apartments in the Main Mill Building,  
8 Town Houses and  
3 Houses.  
There are estate grounds, a leisure centre with gym and swimming pool.  
Only the 35 Apartments in the Main Mill Building will contribute towards the costs of the works.
5. Directions were issued on 19<sup>th</sup> March 2024 which stated that the Application would be determined on or after 29<sup>th</sup> April 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 5<sup>th</sup> April 2024. No request was received.
6. The Directions required the Applicant to send to each of the Respondents, by hand delivery or by first class post and by email, if practicable copies of:
  - i. The application form without the list of leaseholders' names and addresses;
  - ii. A brief description of the relevant works for which dispensation is sought (the application describes the problem but not the details of the works to be carried out);
  - iii. The estimate of the cost of the relevant works, including any professional fees and VAT
  - iv. Any of the evidence relied upon and
  - v. The directions and file with the tribunal confirming that this had been done and stating the dates on which this was done.
7. On 27<sup>th</sup> March the Applicant confirmed that this Direction had been complied with. The Directions required the Respondent Leaseholders who opposed the Application to complete and send an attached reply form to the Tribunal and a statement in response to the Application, with a copy of the reply form to the Applicant, by 12<sup>th</sup> April 2024. No representations were received.
8. The Applicant provided a bundle to the Tribunal which included:
  - A statement of reasons for the Application
  - Schedule of Apportionment of Service Charges
  - Pictures of the Leak
  - Works required and undertaken
  - Invoices for the works

- The Application Form
  - Letter of explanation sent to the Respondent Leaseholders
  - A copy of a Lease
  - Directions and related documents.
9. These together set out the Applicant's case as follows.
  10. The Management Company has an obligation under the Seventh Schedule Paragraph 2 to maintain and repair the buildings, the costs of which shall be contributed by the Lessees through the Service Charge as set out in the Eighth Schedule Paragraph 1.
  11. It was recognised that qualifying works involving investigation and remediation of rainwater ingress into Apartment 4 of the Main Mill Building at Bliss Mill were required in 2023 and Respondent Leaseholders had been made aware of the intention to carry out the works in 2024 via the 2024 Service Charge Budget which was issued late in 2023.
  12. The works became urgent due to long periods of rain during the Autumn and Winter when a part of the building fabric became saturated causing water to leak around a window frame to Apartment 4. Brickwork inside the Apartment had become wet and contents of the Apartment were being damaged causing upset to the Respondent Leaseholder. The Apartment affected was becoming unliveable. Photographs were provided.
  13. Estimated costs of works were obtained from a contractor, JND Construction Ltd, with experience of working on Listed and historic buildings and who had previously worked at Bliss Mill providing effective solutions to problems elsewhere on the estate. The works were planned to commence on 18<sup>th</sup> March 2024 for a period of approximately one week. The estimated cost was £14,629.20 including VAT. 35 Apartments pay towards the building service charge with 4 Apartment out of the 35 paying 3.94% (a Schedule of Apportionment of the Service Charges was provided) and therefore each of their contributions would be £569.66, which being above the £250.00 would mean consultation being required.
  14. The urgency and investigative nature of the work made comparative quotations and consultation impractical. A letter was sent to Respondent Leaseholders on 11<sup>th</sup> March 2024 informing them that urgent repairs were required to stop rainwater ingress to Apartment 4, Bliss Mill. In summary the letter stated that it had originally been planned to undertake the repairs in the Summer of 2024 but due to persistent and heavy rain over several months the water ingress is severe and repairs are needed as soon as possible. The letter referred to the service charge budget for 2024 estimating the cost as being £14,000 and that JND Construction, who were experienced in working with historic Listed buildings and had provided effective solutions to problems in the past on the estate, estimated the price at £14,629.20 inclusive of VAT. It acknowledged that formal

consultation under the Landlord and Tenant Act 1985 should take place but as this could take between 4 to 5 months the Applicant could not wait that long and so have applied to the Tribunal to seek dispensation from consultation. A copy of the application was provided to the Respondent Leaseholders with the letter.

15. The works required and undertaken involved the removal of the inner skin of brickwork to expose the junction between the outer wall and the external patio above the Apartment window. After identifying the cause of the water ingress, a new lead cavity tray was constructed above the window and insulation inserted to prevent cold bridging. The works were completed and the cost was £11,340.00 including VAT, which was lower than the estimate (a copy of the invoice was provided). However, this would still have meant a section 20 consultation being required as the 4 Apartments paying 3.84% would each contribute £441.58.

## **The Law**

16. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
17. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
18. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

## **Determination**

19. In determining whether dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that “*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*”.
20. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:  
*Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT 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. [44]*

21. The Tribunal noted the photographs, the description of the ingress of water and the investigative and remedial works. The Tribunal found from its knowledge and experience of the damage that can result to the fabric of a building if the ingress of water is not remedied promptly, that the work was urgent. The Tribunal had prior knowledge of Bliss Mill and appreciated that there are a limited number of building contractors with the necessary experience to carry out the qualifying works in this instance. It found that taking the urgency of the situation into account it was reasonable to instruct a known qualified contractor that was available rather than engage in what might be a protracted tendering exercise.
22. The Tribunal found that the consultation procedure would not have led to the appointment of a more appropriate contractor and may have resulted in more extensive damage. In support of this view the Tribunal found that the Respondent Leaseholders had been informed of the intended work in the 2023 service charge budget and the documentation provided for the application for dispensation has given them a full account of the need for, urgency and description of the qualifying works. These proceedings have given Respondent Leaseholders an opportunity to show any prejudice by the lack of consultation by evidence that the work was not urgent or identifying an alternative contractor. The Tribunal has not received any such representations
23. Therefore, in the absence of any evidence to the contrary the Tribunal determined that the Respondent Leaseholders were not prejudiced in this instance by the failure to carry out the consultation procedure.
24. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
25. Respondent Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.
26. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Respondent Leaseholders.

**Judge JR Morris**

## **ANNEX 1 - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

## **ANNEX 2 - THE LAW**

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

*A Notice of Intention* to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than

30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

(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.

(2) In section 20 and this section—  
"qualifying works" means works on a building or any other premises, and  
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—  
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.

(4) to (7)... not relevant to this application.