



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

Case reference : **LON/00AC/LDC/2024/0041**

HMCTS code : **P: PAPERREMOTE**

Property : **790 High Road, London, N12 9QR**

Applicant : **Jermyn Street Properties Ltd**

Representative : **Universal Property Management**

Respondent : **Flying Wolf Properties Ltd**

Type of application : **Application to dispense with statutory
consultation requirements under
section 20ZA of the Landlord and
Tenant Act 1985**

Tribunal members : **Judge Tueje**

Date of decision : **21st May 2024**

DECISION

Description of hearing

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of the remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

Decision of the Tribunal

In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.

- (1) The Tribunal grants retrospective unconditional dispensation pursuant to s.20ZA in respect of works to the roof at 790 High Road, Finchley, London, N12 9QR. These works were carried out by SL Whiterose Roofing Ltd, costing £22,850 excluding VAT.
- (2) This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or cost of the subject works.

The Application

1. This Application under section 20ZA, is dated 1st February 2024, and seeks dispensation from the statutory consultation requirements in respect of the above-mentioned works required at 790 High Road, Finchley, London, N12 9QR (the "Property").

Background

2. The Applicant, Universal Property Management Limited, is the block manager for the Property. The Respondent, Flying Wolf Properties Ltd, is the leasehold owner of Flat 6, 790 High Road, Finchley, London, N12 ("Flat 6").
3. The Property is a mixed-use building with commercial premises on the ground floor, and dwellings on the upper floors, consisting of 8 flats.
4. The Application relates to damage and/or dislodged roof tiles and ridge tiles, also damaged rainwater goods. The damage was caused by heavy rainfall, which in turn resulted in rainwater ingress and severe internal damage to 2 flats within the Property.
5. The Applicant arranged for SL Whiterose Roofing Ltd to survey the damage, which it conducted from ground level. The company advised scaffolding would be required to carry out repairs, and recommended replacement of a section of the roof.
6. In October 2023 the Applicant wrote to all leaseholders notifying them of its intention to carry out works to the roof, for which scaffolding would be needed. The letter sent to the Respondent is dated 26th October 2023, and includes the following explanation:

We believe, that there has not been any renovation to the roof for many years, so even though they could do a temporary repair, to solve the current issue, the cost of the scaffolding and works would still be costly.

Due to the age of the current roof, it will be found, that there are a number of other areas that will be in need of repair also. Rather than patch up, it would be more prudent to replace the roof for the long term, saving on costly repairs in the short term.

The leak continues into Flat 5 every time it rains, so it's paramount at this work is carried out as soon as possible.

7. The letter continued that the Applicant recommended SL Whiterose Roofing Ltd based on past dealings with that firm, and because their work was normally guaranteed for 15 years. However, the letter invited nominations from an alternative contractor. It also enclosed 3 quotations the Applicant had been obtained, including one from SL Whiterose Roofing Ltd.
8. The Applicant exchanged e-mails with leaseholders dealing with reports of the internal damage, queries regarding the works, and it understood most leaseholders agreed the works and the cost. The managing agents for Flat 6 were copied into the e-mail exchanges, but did not respond to the communications regarding the works. These e-mails are included in the hearing bundle.
9. Repair works were carried out to the roof beginning on 22nd November 2023, and were completed on 1st December 2023.
10. The above account is set out in a witness statement dated 9th April 2024 from Mr Shaun O'Connor, prepared on behalf of the Applicant. There are also photographs in the bundle showing evidence of water running down internal walls, and considerable pooling of water on internal floors.
11. Following receipt of the Application, the Tribunal made a directions order dated 20th March 2024. By paragraph 4 of that directions order the Applicant was required to prepare a hearing bundle containing, amongst other documents, copies of any replies from the Respondent/leaseholders to the application. Alternatively, the bundle should contain confirmation that there were no responses. Neither of these were included in the bundle.
12. Accordingly, on 9th May 2024 the Tribunal e-mailed the Applicant, copying in the Respondent. The Tribunal's e-mail requested the Applicant provides copies of any replies to the application, or confirms that none were received. The Tribunal also requested a copy of the alternative quotations referred to at paragraph 7 above, as these were not in the bundle.
13. On 10th May 2024, Mr O'Connor e-mailed back attaching the following alternative quotations:
 - 13.1 Davis Roofing Solutions Ltd for £25,200.00 excluding VAT; and
 - 13.2 M. Gilders Roofing Contracts Ltd for £26,875.00 excluding VAT.

14. Regarding any responses to the application, Mr O'Connor's e-mail stated:
- "I have included all the email correspondence with the respondent related to this matter and other tenants in the bundle. We have no evidence of no response, other than we received no response and have no record of a response from the respondent, on this matter, prior to the works and discussions from the other tenants (included in the bundle), although the respondent was copied into the discussions."*
15. At the Tribunal's request, the Respondent was copied into the above e-mail.

The hearing

16. In making its decision, the Tribunal took into account the information provided by the Applicant by way of an indexed paginated bundle comprising 87 pages including the following documents:
- 16.1 The Application for dispensation;
 - 16.2 Mr O'Connor's witness statement;
 - 16.3 The notice of intention dated 26th October 2023;
 - 16.4 SL Whiterose Roofing Ltd's invoice for the works dated 25th November 2023;
 - 16.5 E-mail exchanges regarding the works between the Applicant and various leaseholders;
 - 16.6 Service charge demands sent to the Respondent, and its statement of account; and
 - 16.7 The Respondent's lease.
17. The Tribunal has also taken into account Mr O'Connor's 10th May 2024 and the attached quotations.

The Legal Framework

18. So far as is relevant, section 20 states:
- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-*
 - (a) *Complied with in relation to the works or agreement, or*
 - (b) *Except in the case of works to which section 20D applies, 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 payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*

(3) *This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*

19. Section 20ZA(1) continues:

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 agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

20. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

20.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.

20.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord's failure to comply with the requirements under section 20.

20.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.

20.4 The Tribunal's main focus on such applications is what prejudice, if any, have leaseholders suffered.

20.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.

20.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.

20.7 If appropriate, the Tribunal may grant conditional dispensation.

The Tribunal's Decision

21. The Tribunal reached its decision after considering the documents in the bundle, and taking into account its assessment of that evidence.

22. This determination does not refer to every matter raised, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was relevant to a specific issue, it was considered by the Tribunal.

23. The Tribunal grants dispensation pursuant to s.20ZA in respect of works to the roof at 790 High Road, Finchley, London, N12 9QR. These works were carried out by SL Whiterose Roofing Ltd, costing £22,850 excluding VAT.

The Tribunal's Reasons

24. The Tribunal has had regard to the nature of the works and finds the works were necessary. The roof was damaged and was no longer watertight; this is confirmed in the e-mail exchanges with leaseholders referred to at paragraph 8 above. There is also photographic evidence of water ingress. This, combined with the fact that the damage occurred in winter, when further rainfall would be anticipated, also justified the Applicant treating the necessary repairs as urgent.
25. The Tribunal takes into account that leaseholders were given an opportunity to a nominate contractor, but there were no nominations. Leaseholders were also given an opportunity to raise enquiries, which the Applicant dealt with by e-mail. None of the e-mails expressed any objections to the works.
26. The Tribunal is satisfied that the cost of the works was no more than is necessary because the Applicant has adopted a course of action that was cost-effective taking into account that scaffolding would be required even for temporary repairs. This factor, plus the age of the roof, also supports the cost-effectiveness of the decision to replace a section of the roof.
27. Furthermore, the Applicant obtained 3 quotations, and selected SL Whiterose Roofing Ltd, which provided the lowest quotation.
28. There is no evidence before the Tribunal indicating that the Applicant's failure to comply with the section 20 requirements would affect the extent, quality, and cost of the works to be carried out. The Applicant had used SL Whiterose Roofing Ltd before, had known them to carry out satisfactory work in the past which usually carried a 15-year guarantee.
29. By the directions order dated 20th March 2024, the leaseholders were afforded an opportunity to object to this application. According to the Applicant, none of the leaseholders, including the Respondent, have objected to the application. Therefore, the Tribunal proceeds on the basis that the leaseholders have no objections to the application, and that there has been no relevant prejudice to leaseholders, who are likely to have objected to the application if there had been any prejudice.
30. For the reasons stated at paragraph 24 above, the Tribunal is satisfied that the Works are required to the Property. Therefore, the Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements. The Tribunal has borne in mind the Supreme Court decision in ***Daejan Investments Limited v Benson and others [2013] UKSC 14***. There is no evidence of any prejudice caused to the leaseholders and indeed none have raised an objection to the application.

Dispensation is therefore granted from the statutory consultation requirements.

Name: Judge Tueje

Date: 21st May 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).