



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

**Case Reference** : **CAM/22UD/LDC/2024/0618**

**HMCTS** : **Paper**

**Property** : **42-45 Church Street, Ware, Hertfordshire  
SG12 9EW**

**Applicants (Landlords):** **Edward & John Rabbitt**  
**Representative** : **Kempton Carr Croft, Josh Barringer**

**Respondents** : **All Leaseholders/tenants of dwellings who  
may be liable to contribute towards the cost of  
the relevant works at the Property**  
**Ms K Sadler** Flat A **42 Church Street**  
**Mr G Payne** Flat B **43 Church Street**  
**Mr & Mrs Ciarla** Flat C **44 Church Street**  
**Ms E Sundman** Flat D **45 Church Street**

**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** : **15 November 2024**  
**Date of Directions** : **18 December 2024**  
**Date of Decision** : **13 February 2025**

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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 the Leaseholders.

## **Reasons**

### **The Application**

3. On 15 November 2024 the Applicants' Representative applied for retrospective dispensation from the statutory consultation requirements in respect of qualifying works which are to repair an area of the roof at the Property.
4. The Property is a purpose-built mixed-use development of 3 commercial units on the ground floor and 4 leasehold flats on the first-floor access via 2 communal stairwells. The Property is of brick facing cavity wall construction partially rendered under a pitched, hipped, and valleyed roof covered in plain concrete and matching half round ridge tiles. There is an undercroft providing access to a courtyard parking area at the rear of the Property.
5. The Applicants' Representative said that there was an active water leak which was causing damage to Flat A at 42 Church Street and the communal areas. The Landlords have agreed to forward fund the necessary repairs and recover the costs from the commercial and residential Leaseholders under the terms of the Lease.
6. The Applicants' Representative said he had written to the Respondent Leaseholders explaining the repairs and providing a Notice of Intention with a copy of the contractor's costs and notifying them of the urgency of the works and the dispensation application. The contractor was to commence work on 18 November 2024.
7. Directions were issued on 18 December 2024 which stated that the Application would be determined on or after 10 February 2025 based on written representations and without an inspection, unless either party made a request for an oral hearing by 24 January 2025. No request was received.
8. The Directions required the Applicant or its Representative to send by 10 January 2025 to each of the Respondent Leaseholders, 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. The Directions;

- iii. A clear concise description of the relevant works for which dispensation is sought;
- iv. The estimate of the cost of the relevant works, including any professional fees and VAT;
- v. Any other evidence relied upon; and

To file with the tribunal a letter confirming that this had been done and stating the date on which this was done.

- 9. The Applicants' Representative confirmed that this Direction had been complied with and provided a copy of the letter dated 20 December 2024 informing the Respondent Leaseholders that an application had been made enclosing a copy of the Application, Directions, Notice of Intention, an Estimate of the overall Cost, and the Contractor's Quotation for the qualifying works.
- 10. If the Respondent Leaseholders wished to make representations the Directions required them to do so via an attached reply form by 24 January 2025. By a letter dated 27 December 2024 the Applicants' Representative informed the Tribunal that the Applicants' Representative had not received any representations opposing the Application for dispensation. The Tribunal also had not received any objections to it.

## **The Law**

- 11. 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.
- 12. 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.
- 13. 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.
- 14. References to "tenants" includes "leaseholders" and vice versa.

## **Submissions & Evidence**

- 15. The Applicants' Representative provided a bundle to the Tribunal which included:
  - A copy of the Lease

- A copy of the Notice of Intention dated 15 November 2024
- Application to the Tribunal dated 15 November 2024
- Tribunal Directions
- A copy of the Applicants' Representative's letter to Leaseholders in compliance with Directions dated 20 December 2024
- Quotation from the Contractor dated 11 November 2024
- Estimate of Overall Cost
- Invoice from the Contractor dated 23 December 2024
- Invoice from Applicants' Representative for inspecting site and monitoring works

These together set out the Applicants' case as follows:

16. A copy of a Lease dated 2 November 1987 for a term of 99 years from 24 June 1987 was provided which was understood to be representative of all the Leases of the demised premises in the Building the relevant provisions of which are:
  - a) Under Clause 1 of the Lease:  
 "The following expressions have the following meanings:  
 (b) "the Building" means the block of flats and shops of which the demised premises form part"
  - b) Under Clause 4(10) of the Lease:  
 "On Twenty fourth day of June and the Twenty-fifth day of December in each year to pay to the Landlord or its duly appointed agents the sum of one hundred pounds on account of a proportionate share (assessed by reference to the floor area of the other flats and shops) with the tenants of the other flats and shops of the costs outgoings and expenses specified in the Sixth Schedule the amount of such share shall be determined by the landlord or its managing agents in accordance with accounts prepared on an annual basis...and the landlord or its managing agents may increase the said sum of one hundred pounds for time to time should the said sum...be insufficient to meet the costs outgoings and expenses together with a further sum by way of management charge..."
  - c) Under Paragraph 2 of the Sixth Schedule of the lease:  
 "The costs or expenses of cleaning decorating maintaining repairing and renewing the other parts of the Building (including the foundations roofs principal timbers floors wall ceiling windows doors and the fittings thereof and therein save such parts as form the part of the premises of any separate lease and may be responsibility of any separate tenant)"!
17. The Applicants' Representative said that there was an active water leak which was causing damage to Flat A at 42 Church Street and the communal areas. Following a Site Inspection by the Applicants' Representative a quotation dated 11 November 2024 was obtained for works identified as being required from Hopson Brothers Services Ltd at an estimated cost of £3,160.00 excluding VAT.

Taking into account the apportionment in the Lease, were all units of the same floor area the unit cost of the works would exceed the sum of £250.00, therefore the works are referred to as Qualifying Works and the Landlord is required under section 20 of the Landlord and Tenant Act 1985 to carry out a consultation procedure. All or a part of the procedure may be dispensed with if an application is made to the tribunal and that tribunal is satisfied that it is reasonable to dispense with the procedure in that the Leaseholders will not be prejudiced by such dispensation.

18. On 15 November 2024 the Applicants' Representative served a Notice of Intention on the Respondent Leaseholders in compliance with the section 20 procedure, explaining from the Site Inspection and the Contractor's Quotation the Qualifying Works to be carried out as follows:

- Erect scaffolding to or suitable alternative to allow access to complete the necessary roof repairs.
- Replace any slipped, missing, or damaged tiles including replacing damaged ridge tiles and re-bedding or mortar. Strip off and replace the leaded valley which has been split with new including all associated works.
- Any other works identified which if left unattended will allow water to penetrate the internal fabric of the building via the roof and cause damage internally.

It was added that it was considered necessary to carry out the works due to evidence of water ingress within Falt A, 42 Church Street and the hallway. The works are also required in accordance with good estate management.

The Respondent Leaseholders were invited within 35 days to make observations in relation to the proposed works and to propose the name of a person from whom it should be tried to obtain an estimate. The consultation period was to end on 20 December 2024.

19. Due to the urgency of the work, the Application for dispensation was also made on 15 November 2024 by the Applicants' Representative. The Application described the Qualifying Works as set out in the Notice of Intention. It was stated that the contractor who had provided the quotation was one whom the Leaseholders had nominated previously. The Applicants' Representative submitted that where there is active ingress of water which effects habitable accommodation it was unreasonable to carry out a full section 20 procedure which could take 3 to 4 months when there was a duty of care to resolve matters as soon as possible. There was also an obligation on the Applicants' Representative to ensure recovery of costs which was why the Application was made.

20. In accordance with the Directions dated 18 December 2024 the Applicants' Representative sent to each of the Respondent Leaseholders a copy of the:
- Application dated 15 November 2024,
  - Directions dated 18 December 2024,
  - Notice of Intention dated 15 November 2024,
  - Estimate of the Overall Cost
  - Contractor's Quotation dated 11 November 2024
- Compliance with Directions was confirmed on 20 December 2024
21. The Estimated Overall Cost of ££6,264.00 included the costs and fees for applying for dispensation, the cost of the Qualifying Works, the Applicants' Representative's costs for the Site Inspection and Monitoring of the Qualifying Works and VAT.
22. The Contractor's Invoice for the Qualifying Works was ££3,792.00 including VAT and the Invoice for Site inspection and Monitoring was £936.00 including VAT.
23. The Applicants' Representative in a letter to the tribunal dated 27 January 2024 confirmed that no representations had been made opposing the Qualifying Works or the Application for Dispensation.

## **Findings**

24. The Tribunal finds from the Lease that the Landlord is obliged to make repairs to the roof and that these are chargeable to the Leaseholders through the Service Charge.
25. The Tribunal from its knowledge and experience is aware of the need to act promptly when there is water ingress from a roof. Such ingress can cause not only damage to the accommodation below and the structure of the building but can amount to a health and safety risk as it can result in damp and mould and have a serious effect regarding the electrical installation.
26. The Tribunal finds that the requirements of the section 20 procedure were partially fulfilled to the extent that a Notice of Intention was served giving the required period for observations and contractor nominations. The tribunal also finds that the Respondent Leaseholders were, in compliance with Directions, given sufficient information regarding the Qualifying Works and an opportunity to make representations and identify any prejudice they had suffered by the failure of the Applicant to comply with the consultation requirements in full. The Tribunal notes that the Contractor who carried out the work was one that had been nominated by the Leaseholders previously. The Tribunal finds that the Respondent Leaseholders did not consider it necessary in the circumstances to respond.
27. Therefore, considering the necessity and urgency of the work and that an opportunity was given to the Respondent Leaseholders to make representations,

the Tribunal finds that the Respondent Leaseholders have not suffered any relevant prejudice by the failure to carry out the consultation procedure.

## **Determination**

28. In making its decision the Tribunal had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. In summary, the Supreme Court noted the following:
- 1) The main question for the Tribunal whether the landlord's breach of the section 20 consultation requirements resulted in the leaseholders suffering real prejudice.
  - 2) The financial consequence to the landlord of not granting a dispensation is not a relevant factor.
  - 3) The nature of the landlord is not a relevant factor.
  - 4) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - 5) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - 6) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/ or legal fees) incurred in connection with the landlord's application under section 20ZA.
  - 7) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - 8) The Supreme Court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
  - 9) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
  - 10) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
29. 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).
30. The Tribunal does not include a condition regarding the costs of the Application for Dispensation. Those incurred can be off set against savings that may be made in the Applicants' Representative's costs in not having to carry out the full consultation procedure and the benefit to the Leaseholders in having the urgent Qualifying Works carried out promptly.

31. The 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 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.
32. 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 – Right 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.