



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

Case Reference : **CAM/00KF/LDC/2024/0603**

Property : **220 Southchurch Road, Southend on Sea,
Essex, SS1 2LS**

Applicant : **Long term Reversions (Torquay) Ltd**
Representative : **Warwick Estates**

Respondents : **Miss E SutaFront - First Floor Flat
Ms E H N Pearce - Rear First Floor Flat
Late Ms L Painter - Front Ground Floor Flat
Miss H L Smeeton - Rear Ground Floor Flat
Leaseholders liable to contribute towards the
cost of the relevant works**

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 : **23 September 2024**
Date of Directions : **27 January 2025**
Date of Decision : **10 March 2025**

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 Leaseholders.

Reasons

The Application

3. On 23 September 2024 the Applicant applied for retrospective dispensation from the statutory consultation requirements in respect of works to repair leaks affecting the internal communal area and flats on the first and ground floor and to undertake a roof survey to determine whether any other repairs are necessary.
4. The total number of flats is 4. The total cost of the work is £9,517.74 including VAT which exceeds the threshold of £250.00 per unit which requires the Applicant to consult the Leaseholders in accordance with the procedure required under section 20 of the Landlord and Tenant Act 1985. The works are therefore "qualifying works."
5. From the Application Form and the Internet, the Tribunal found that the Property was a two-storey brick building with some stone mullions and lintels, probably constructed in the late 19th early 20th Century as a substantial house. It has since been converted into 4 flats. Originally either clay tile or slate, the three pitched roofs are now covered in concrete tiles. There are two pitched roofs one across the front and the other across the rear with a lead gulley between them. There is also a pitched hip roof at the back of the building at right angles to the pitched roof across and abuts it with lead valleys. From the description of the qualifying works it is primarily the gulley and valleys which are leaking.
6. Directions were issued on 27 January 2025 which stated that the Application would be determined on or after 10 March 2025 based on written representations and without an inspection, unless either party made a request for an oral hearing by 17 February 2025. No request was received.
7. The Directions required the Applicant to send by 3 February 2025 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. 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; andTo file with the Tribunal confirming that this had been done and stating the date on which this was done.

8. On 31 January 2025 the Applicant confirmed that this Direction had been complied with that day, and a copy of the letter sent to the Respondents was provided.
9. The Directions also required those Respondents who opposed the application by 17 February 2025 to:
 - a) Complete the reply form attached to the Directions; and
 - b) Send to the Applicant a statement in response to the Application together with any evidence and other documents upon which they wish to rely.
10. On 17 February 2025 the Applicant in accordance with Directions the Applicant provided a Bundle and confirmed that no replies, statements, or other documents had been provided by the Respondent Leaseholders and none had been received by the Tribunal.

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.

Submissions & Evidence

14. The bundle provided by the Applicant included:
 - A copy of the Lease;
 - The Application Form;
 - The Directions;
 - Section 20 Notice of Intention for repairs to roofs and a service charge demand with covering letter;
 - Letter dated 31 January 2025 to all Respondents enclosing Tribunal Directions with description of the works, contractor's report and invoices and letter to the Tribunal confirming compliance with Directions and that no objections regarding the Application for Dispensation had been received from the Respondents.

15. These together set out the Applicant's case as follows:

The Lease

16. A sample copy of the Lease, which was understood to be common to all the Flats, was provided. Leases are for a term of 99 years from the date of the Lease which, in the case of the sample Lease was 10 June 1983. The relevant provisions of the Lease are:
- a) Clause 1 of the preamble to the Lease has following definitions
 - b) The expression the "the Building" shall mean the building block or group of flats
 - d) The expression "repair" includes the rectification or making good of any defect in the foundations or structure of the Building
 - b) Under Clause 1 of the Lease the Tenant shall "pay by way of additional rent the Service Charge or sum on account thereof calculated in accordance with the Fifth Schedule"
 - c) Under Clause 2 (13) the Tenant covenants to:
"contribute and pay the proportion set out in the Fourth Schedule hereto to the costs expenses out goings and other matters (hereinafter called "the Service Charge") mentioned in the Fifth Schedule"
 - d) Under Clause 3 (7) the Landlord covenants to:
"maintain repair decorate and renew those matters set out in Part I of the Fifth Schedule of the Lease"
 - e) Part I of the Fifth Schedule states:
The costs expenses outgoings and other matters as follows: -
 - (ii) Maintaining repairing decorating and renewing
 - (a) The main structure and in particular the foundations the roof gutters and rainwater pipes of the Building

The Application Form

17. On the Application Form the Applicant stated that there had been an ingress of water from the roof which had affected the internal communal area and the flats located on the ground and first floors. A contractor had been engaged to repair the gullies and valleys from which the water was leaking and to survey the roof to determine what other repairs might be needed.
18. The leak had caused a large section of the plaster ceiling in the communal area to come away from the laths exposing asbestos material (photographs provided). An asbestos specialist contractor had attended and removed the loose asbestos debris and the contractor is now carrying out regular air tests to ensure the safety of leaseholders and persons resident or visiting the Property.

19. The Applicant stated that the repairs were deemed urgent due to the change in season (the work was to be carried out before the winter) and the frequency of rainfall. Also, the ingress of water was causing significant damage to the Property. The Applicant felt they could not wait until a full section 20 consultation was carried out.

Directions

20. As noted above the Applicant complied with Directions.

Notice of Intention and Service Charge Demand

21. A Notice of Intention dated 24 September 2024 was served together with a Service Charge demand to all Respondents. The Notice stated that:

“It is the intention of Long Term Reversions (Torquay) Limited to enter into an agreement to carry out works in respect of which we are required to consult leaseholders.

2. The works to be carried out under the agreement are as follows:

Repairs to the gullies and a roof survey to determine further roof repairs needed.

3. We consider it necessary to carry out the works to stop water ingress and leaks into the property.

4. We invite you to make written observations in relation to the proposed works by sending them via email to [Warwick Estates].

5. Observations must be made within the consultation period of 30 days from the date of receipt of this notice. The consultation period will end on the 29th of October 2024.

6. We also invite you to propose, within 30 days from the date of receipt of this notice, the name of a person from whom we should try to obtain an estimate for the carrying out of the proposed works described in paragraph 2 above.

Please be advised that we do operate strict criteria for the selection of contractors to ensure the best value for money, and to ensure the continued health and safety standards on the development. Any contractor nominated must successfully complete our contractor accreditation process and be able to demonstrate that they hold current public liability insurance cover of at least £2 million.

A note explaining the consultation procedure was included.”

22. A letter included with the Supplementary Service Charge Demand for the works was provided which stated:

“We are writing to you in relation to the Notice of Intention issued on the 24th of September 2024 regarding the urgent repairs needed to the roof and gullies of the building. These repairs are necessary to prevent further water ingress and leaks that have been affecting the property.

As you may be aware, the estimated costs for these repairs exceed the Section 20 threshold, which typically requires a full consultation process with leaseholders. While we have issued the required Notice of Intention, we are simultaneously applying to the First Tier Tribunal for dispensation from the full consultation process. This will allow us to expedite the works and avoid further damage to the building.

Unfortunately, there are currently insufficient funds in the reserve fund to cover the full cost of these repairs. As a result, we have had to issue a manual demand to collect the necessary contributions from all leaseholders.

The total cost breakdown is as follows:

- Costs incurred to date (for several visits): £2,241.84
- Tendered costs for the required works: £4,730.87
- Total: £6,972.71
- Less reserve fund balance: £679.69
- Amount to be collected: £6,300.02

Please find enclosed your individual contribution demand.

The contractor selected to carry out the works has provided the most cost-effective solution, and we have also obtained alternative quotes to ensure value for money. We are happy to provide copies of the quotes and invoices for the costs incurred thus far upon request.”

23. The Demand was for £1,575.00 for each of the four Respondent Tenants

Letter dated 31 January 2025 enclosing Tribunal Directions

24. The Applicant sent a letter to all the Respondents stating that:
“...further to the Notice of Intention and additional demands issued for roof works at 220 Southchurch Road an Application for Dispensation has been made under Section 202A of the Landlord and Tenant Act 1985.”

Enclosed were:

- i. A copy of the application form;
- ii. A copy of the directions;
- iii. A clear, concise description of the relevant works for which dispensation is sought;
- iv. An estimate of the costs of the relevant works; and
- v. Other evidence including the contractor’s report and several invoices.

25. The description and estimate of the works enclosed was as follows:

- “1. Initial attendance to report of collapsed ceiling - £300 including VAT
2. Environmental team attendance to clear fallen ceiling in communal area containing asbestos - £1,740.00 including VAT
3. Air test to deteriorating ceiling - £270.00
4. Attended to report of a leak in another area of the roof. Performed temporarily fix to a hole in the roof from the loft space. Temporary covering placed under the felt and tarpaulin placed in the loft space to minimise further damage - £350 including VAT
5. Attend site to report of a leak coming through the ceiling in the communal hallway. A temporary covering had previously been placed on the roof as the leak is ongoing. Flat 2 confirmed during this visit that the leak is now affecting their flat in addition to the communal areas. Temporary covering moved back into position to minimise damage to the internal communal areas and Flat 2 - £348 including VAT
6. Attend site to perform a temporary repair to the roof. Scaffolding required to undertake a full repair. Temporary covering previously placed on the roof had come away on one side which is causing the leak to continue to come through. Extended the temporary covering to ensure it stays securely until a permanent fix is found - £270 including VAT
7. Attend to carry out permanent repair to the roof following an ongoing leak. Access gained via scaffold in Flat 3's garden. Lead details applied over the area of concern. All lead work has been sealed to add extra security. All debris and materials have been removed from site - £4,730.87
8. Further repair works identified during previous permanent repair visit. Attend site to clean, clear, and dry two gullies, prime the gullies, apply two coats of Bullet roof membrane, then clean and clear the site - £1,778.87 including VAT

Total Cost of Works - £9,517.74”

26. The Applicant stated that costs as detailed in points 2 and 3 above have been submitted to the building's insurer for their consideration. Costs to remediate the internal areas once all roof works have been completed are currently unknown, however there is an open claim with the insurer and all costs associated with internal repairs will be submitted for their consideration.
27. A report by the contractor was also included with the letter to all the Respondents (copies were provided in the Bundle). The report detailed the initial work carried out to stop the ingress of water and survey the roof. It then outlined later work carried out from scaffolding to repair the gulleys and valleys and replace cracked tiles. In the Bundle several invoices from Xtra Maintenance Ltd (the chosen contractor) were provided. There were also invoices relating to the asbestos removal and monitoring from Clifford Devlin, Life Environmental Services and West Cross Environmental Services. In addition, a quotation was included from Millane Contract Services Ltd for roof repairs of £4,515.00 ex VAT.

Findings

28. The Tribunal found from the evidence adduced that the ingress of water was causing damage to the Property and that remediation was urgent. The Tribunal also acknowledged the dangers of asbestos particles being released into the air due to the collapse of part of the ceiling on the landing and the need for immediate action.
29. The Tribunal found that an alternative estimate for the permanent repair had been obtained from Millane Contract Services Ltd but Xtra Maintenance Ltd had been chosen as providing the best remedy for the leak.
30. The Tribunal found that a Notice of Intention was served which gave an opportunity for Respondents to make observations and nominate a contractor. No observations or nominations were made. The Respondents were sent a Service Charge Demand which informed them of the likely cost up to the date of the Demand.
31. The Tribunal also found that the Respondents have had an opportunity to make representations during the Application for dispensation from the consultation procedure. The documents sent with the letter informing the Respondents of the Application were comprehensive in respect of the description of the qualifying works, their cost and the contractor's report which was clear about the need for repair and identification of the repairs that were carried out. No objections to the Application for dispensation have been received from the Respondents.
32. The Tribunal finds that the Leaseholders have not been prejudiced by the failure to carry out the consultation procedure considering:
 - the urgency of the works to prevent damage to the Property;
 - the need for a temporary repair to arrest the damage already caused;
 - the carrying out of a permanent repair before the winter months; and
 - the Respondents have been kept informed and given an opportunity to make representations regarding the works.

Determination

33. 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 is 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 unreasonable costs for work or services or 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.
34. 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).
 35. 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.
 36. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all 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.