



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

Case Reference : **MAN/00CC/LDC/2023/0065**

Property : **57-62 Bishopsfield Drive, York YO26 4WY**

Applicant : **St Peters Quarter Residents Association Limited**

Applicant's Representatives : **Mulberry PM Limited**

Respondents : **The Residential Long leaseholders at the property**

Type of Application : **Landlord and Tenant Act 1985 – s 20ZA**

Tribunal Members : **Judge J.M.Going
K.Kasambara MRICS**

Date of Decision : **20 February 2024**

DECISION

The Decision

Any remaining parts of the statutory consultation requirements relating to the roof repairs which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 14 September 2023 (“the Application”) the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of works required to the roof at the property (“the roof repairs”).
2. The Tribunal issued Directions on 22 November 2023 confirming that it considered that the Application could be resolved on submission of written evidence leading to an early determination, but that any of the parties could request an oral hearing. None have done so.
3. The Applicant, acting through its managing agent Mulberry PM Limited (“Mulberry”) provided a bundle of documents including a statement of case, copies of a registered lease (“the sample Lease”), letters dated 13 September 2023 sent to each of the 6 Respondents (“Flat Owners”), a quotation from LS Roofing dated 12 September 2023 for £1600, and LS Roofing’s subsequent invoice dated 29 November 2023 for £1520.
4. None of the Flat Owners has indicated to Mulberry or the Tribunal any objection to the Application.

The facts and background to the Application

5. 57-62 Bishopsfield Drive (“the Block”) has not been inspected by the Tribunal but is described in the Application as being 6 apartments in a purpose-built block over 3 floors with a communal area. The Tribunal has also been able to gain useful insights from Google’s Street view and satellite images.
6. It is understood, from the sample Lease, that each Flat Owner owns an apartment within the Block under a long-term lease, ending on 31 December 2150, and is due to pay through the service charges for, amongst other things, one sixth of the costs of the management maintenance repair and renewal of “the main structure roof and foundations of the block...”
7. It is explained in the Application:-

“Water ingress to 62 Bishopfields Drive was reported on 1 September which is impacting a bedroom within the property from the roof void. Contractors have attended to advise urgent repairs are required which are due to commence on 15 September 2023. The water ingress is impacting on the electrics within the property.

Repairs to ridge tiles and verge flashings are required.

Respondents have been notified of the urgency of the works and that funds are held in the service charge and reserve funds. They were given the opportunity to contact Managing Agents for further information if required.

Dispensation of all consultation requirements is requested on the basis that delaying the repair would pose immediate dangers from a health and safety view.

Due to the nature of the work there has been an inability to obtain more than one estimate for the work”.

8. None of the evidence has been disputed.

9. The Tribunal’s Directions confirmed that any Flat Owner who opposed the Application should, within the stated timescale, send to the Applicant and to the Tribunal any statement they might wish to make in response.

10. None have done so, and the Tribunal convened on 19 February 2024 to determine the Application.

The Law

11. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) (“the Regulations”) specify detailed consultation requirements (“the consultation requirements”) which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

12. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4-stage process: –

- Stage 1: Notice of intention to do the works

Written notice of its intention to carry out qualifying works must be given to each tenant and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting tenants to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

The Landlord must seek estimates for the works, including from a nominee identified by any tenants or the association.

- Stage 3: Notices about estimates

The Landlord must supply tenants with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the

proposed works, together with a summary of any individual observations made by tenants and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

The Landlord must give written notice to the tenants within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the tenants' nominee.

13. Section 20ZA(1) states that: –

“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... the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

14. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements which are part and parcel of a network of provisions, is to give practical support is to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation are not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

15. The Tribunal began with a general review of the papers, to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of its procedural rules permits this provided that the parties give their consent (or do not object when a paper determination is proposed).

16. None of the parties have requested an oral hearing and having reviewed the papers, the Tribunal is satisfied that this matter is suitable to be determined without a hearing. The documentation, which has not been challenged, provides clear and obvious evidence of the contents and the relevant facts, allowing conclusions to be properly reached in respect of the issues to be determined.

17. Before turning to a detailed analysis of the evidence, the Tribunal reminded itself of the following considerations: –

- The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
- In order to grant dispensation the Tribunal has to be satisfied only that it is reasonable to dispense with the requirements: it does not have to be satisfied that the landlord acted reasonably, although the landlord's actions may well have a bearing on its decision.
- The Application does not concern the issue of whether or not service charges will be reasonable or payable. The Flat Owners retain the ability to challenge the costs of the additional works under section 27A of the 1985 Act.
- The consultation requirements are limited in their scope and do not tie the Applicant to follow any particular course of action suggested by the Flat Owners, and nor is there an express requirement to have to accept the lowest quotation. As Lord Neuberger commented in *Daejan* "The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are done by, and what amount is to be paid for them".
- Albeit, as Lord Wilson in his dissenting judgement in the same case also noted "What, however, the requirements recognize is surely the more significant factor that most if not all of that amount is likely to be recoverable from the tenant."
- Experience shows that the consultation requirements inevitably, if fully complied with, take a number of months to work through, even in the simplest cases.
- The Office of the Deputy Prime Minister in a consultation paper published in 2002 prior to the making of the regulations explained "the dispensation procedure is intended to cover situations where consultation was not practicable (e.g. for emergency works)...."

18. Applying the principles set out in *Daejan* the Tribunal has focused on the extent, if any, to which the Flat Owners have been or would be prejudiced

by a failure by the Applicant to complete its compliance with the consultation requirements.

19. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the Flat Owners beyond the obvious facts of not having been consulted, or of having to contribute towards the costs of works.

20. The Tribunal finds no evidence of any actual or relevant prejudice to the Flat Owners: there is no evidence that any dispute or have disputed the need for the roof repairs.

21. It is also noted that, in the event and although the estimate was for more, the costs of the roof works when divided equally between the 6 Flat Owners results in a charge of £253.33 for each, i.e. only £3.33 above the threshold figure triggering the consultation requirements.

22. The Tribunal accepts that where leaks occur there is inevitably a degree of urgency. Clearly there are immediate issues for those Flats directly affected as well as for their owners, occupiers and any visitors in terms of health, safety and comfort. There is also the clear possibility of consequential and escalating damage if such problems are not properly addressed in a timely fashion.

23. The Tribunal is not surprised therefore by the lack of any objection to the Application. The potential adverse cost consequences of delaying the completion of the roof repairs to allow for the consultation requirements to be fully worked through, once their need became apparent, is likely to have been clear to all.

24. The Tribunal is satisfied that Applicant has made out a compelling case that the roof repairs were necessary, appropriate and urgent.

25. In the absence of any written objections and having regard to the steps that have been taken, the Tribunal has concluded that the Flat Owners will not be prejudiced by dispensation being granted.

26. To insist now on the completion of the consultation requirements would serve no practical purpose.

27. For these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements unconditionally.