



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

Case Reference : **CAM/12UB/LDC/2024/0016**

HMCTS : **Paper**

Property : **12 to 28a Cavendish Lodge, Cavendish Road,
Cambridge CB1 3AF**

Applicant
**Freeholder, Landlord &
Management Company:** **Statekey Limited**
**Managing Agent &
Representative** : **Encore Estate Management Limited**

Respondent : **All Leaseholders of dwellings who may be
liable to contribute towards the cost of the
relevant works at the Property**

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 : **14 March 2024**
Date of Directions : **31 October 2024**
Date of Decision : **17 January 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 the Leaseholders.

Reasons

The Application

3. On 14 March 2024 the Applicant's 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. Cavendish Lodge is a block of 18 purpose-built flats developed by Construct Reason in the 1980s. No inspection of the Property was made but the following was obtained from the Internet. The building is of 3 storeys with brick elevations. To the front there is a pent roof to the apex divided by parapets. At the rear the roof is in two stages with windows over the upper roof and between the upper and lower roof to give light to the third storey which is set into the roof. There is a walkway at first floor level which is covered by the lower roof. The flats appear to have their own entrances and so may be described as maisonettes in this regard.
5. Quotations from Cambridge City Maintenance Limited, the contractor engaged, which were for £4,992.00 including VAT for the work over Flat 12, £3,595.20 including VAT for the work over flat 20 and £2,484.00 including VAT for the scaffolding, totalling £11,071.20. Therefore between 18 flats the total cost of the qualifying work is £615.07 per flat 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.
6. It was said that these works were required as a matter of urgency due to the ingress of water into flats 12 and 20 below. A surveyor had been appointed to determine the source of the water ingress and it was confirmed to be entering via multiple sources causing damp issues which may affect the residents' health if left unaddressed if the consultation procedure were followed.
7. Directions were issued on 31 October 2024 which stated that the Application would be determined on or after 9 December 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 21 November 2024. No request was received.
8. The Directions required the Applicant or its Representative to send by 7 November 2024 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 Applicant's Representative confirmed that this Direction had been complied with and provided a copy of the letter dated 7 November informing the Leaseholders that an application had been made enclosing a copy of the Directions, quotations, and invoices 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 26 November 2024. No representations were received.

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 Applicant's Representative provided a bundle to the Tribunal which included:
 - A copy of the Lease
 - A letter dated 14 March 2024 from the Applicant's Representative to the Respondent Leaseholders informing of them works required, their urgency and the intention to apply for dispensation from the consultation requirements.

- Application to the Tribunal
- Tribunal Directions
- Applicant's Representative's confirmation regarding compliance with Directions
- Quotations from the contractor
- Invoices from the contractor.

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

16. The relevant provisions of the Lease are:

- a) Under Clause 3(5)(b) of the Lease:
 "In accordance with the said general scheme for the benefit of the Lessor and the Lessees of the remainder of the Building the Lessee hereby covenants with the Lessor the Company and the Lessees for the time being of the other parts of the Building and with each of them that the Lessee will from time to time and at all times hereafter during the said term:
 ...
 Contribute and pay on demand one-eighteenth part of all costs charges and expenses from time to time incurred or to be incurred by the Company in performing and carrying out the obligations and each of them under the Sixth Schedule hereto ..."
- b) Under Clause 7 of the Lease:
 "The Company hereby covenants with the Lessee to perform and observe the obligations and each of them set out in the Sixth Schedule hereto"
- c) Under Paragraph 1(a) of the Sixth Schedule of the lease "The Company will whenever reasonably necessary...repair redecorate and renew:
 The external walls and structure and in particular the main load bearing walls and foundations roof..."

17. On 14 March 2024 the Applicant's Representative wrote to all the Leaseholders of Flats 12 to 28a, Cavendish Lodge. The letter stated that:

- An urgent investigation had been carried out following a report of a leak into flats 12 & 20. Cambridge City Maintenance Limited had attended and discovered that there is mortar pointing missing from the lead flashing running up the gable brickwork and there are large gaps in the leadwork where it has been dressed over the tiles. Below the lead flashing a felt soaker had been installed to help prevent water ingress but this has failed due to deterioration. It was also noted that the capping is missing from the rear section of the gable wall above flat 20 which may be contributing to the water ingress therefore this must be reinstated.
- The cost of the works had been assessed and it was noted that they are above the Section 20 limit of £250 per property. Given that heavy rain was

forecast, the remedial repair work to the roof required urgent attention and needed to proceed as a priority with retrospective application for Section 20 consultation dispensation.

- The letter went on to say that the remedial repair work would be funded by the existing reserve fund.
 - It was added that an application for dispensation in order that the works can proceed without the full consultation required for works exceeding £250 per leaseholder, due to their urgency
18. The Application made on 14 March stated that flats 12 and 20 were suffering significant water ingress. A surveyor had been appointed to determine the source of the water ingress and it was confirmed to be entering via multiple sources externally from the roof and causing damp issues which may affect the residents' health if left unaddressed through the consultation procedure. The contractor's quotations referred to below described the qualifying works and the issues they were to remediate.
19. In addition, the Applicant's Representative said it had inquired about an insurance claim for the internal damage to the affected properties, but the roof repairs were not recoverable as it is classed as wear and tear. This left no other viable option, but to cover the investigations and repair works through the service charge.
20. Directions were issued on 31 October 2024 and in compliance the Applicant's Representative sent a letter on 7 November 2024 to all Respondent Leaseholders informing them that an application for retrospective dispensation had been made to the Tribunal and enclosing a copy of the Application Form and the Directions together with the quotations and the final invoices that had been received as the work had already been completed. It was also said that the dispensation bundle would follow as detailed in the Directions.
21. No representations were received from the Respondent Leaseholders in response to the Directions.
22. A copy of the quotations, dated 5 February 2024 from the contractor, Cambridge City Maintenance Ltd, for the investigation and remedial work over Flats 12 and 20 were provided which stated:
- All works to be undertaken during normal working hours,
 - Free and clear access required for the duration of the works,
 - Scaffold to be extended down the gable elevation and wrap around the rear to allow safe access to the rear sections of roof.
 - On completion remove all debris, strike the scaffolds leaving the work area clean and tidy

Front elevation

- Specialist to strip the tiles back from the edge of the parapet wall from the ridge line down to the gutter line
- Cut back the timber roof battens
- Supply and fit a new wall abutment gutter fixed to the existing tile battens running up behind the existing lead flashing
- Re-lay the tiles and re-dress the existing lead flashing
- Mastic point where required

Rear elevation

- Specialist to strip the tiles back from the edge of the parapet wall on the 2 sections of roof down to the gutter line gutter line
- Cut back the timber roof battens on each section
- Supply and fit a new wall abutment gutter fixed to the existing tile battens running up behind the existing lead flashing
- Re-lay the tiles and re-dress the existing lead flashings
- Mastic point where required

23. A copy of the invoices dated 3 July 2024 were provided which were in accordance with the quotations for the sums of
£4,992 (including £832.00 VAT) for the work over Flat 12,
£3,595.20 (including £599.20 VAT) for the work over Flat 20,
£2,484.00 (including £414.00 VAT for scaffolding).

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 above matters were considered by the Applicant's Representative. The Tribunal finds that the requirements of the section 20 procedure were partially fulfilled to the extent that the letter dated 14 March 2024 amounted to a Notice of Intention. Although the required period for representations was not given, nevertheless, Leaseholders were invited to ask questions and seek further information if they wished.
27. The letter dated 5 February 2024 sent in response to the Directions enclosed the Directions, which invited the Respondent Leaseholders to make representations, and both the quotations for the works and the invoices. The Tribunal finds that these documents gave sufficient information to the Respondent Leaseholders and

opportunity to respond to the application for dispensation from the other requirements of section 20 and identify any prejudice they had suffered by the failure of the Applicant to comply with the consultation requirements in full. The Tribunal finds that the Respondent Leaseholders did not consider it necessary in the circumstances to respond.

28. Therefore, considering the necessity and urgency of the work and that an opportunity was given to the Leaseholders to make representations, the Tribunal finds that the Leaseholders have not suffered any relevant prejudice by the failure to carry out the consultation procedure.

Determination

29. 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.

30. 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).
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 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.