



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

Case Reference : **CAM/26UL/LDC/2024/0615**

HMCTS : **Paper**

Property : **Sefton Court, Lemsford Lane, Welwyn Garden City, Hertfordshire AL8 6WW**

Applicant : **Grays Inn Capital Limited**
Representative : **HML, Iram Nabi**

Respondent : **All Leaseholders and Tenants 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 : **11 November 2024**
Date of Directions : **28 January 2025**
Date of Decision : **1 May 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) which the Applicant and its Representative have not been able to fulfil.

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 11 November 2024 the Applicant applied for retrospective dispensation from the statutory consultation requirements in respect of qualifying works which are to repair the roof at the Property. It was said that these works were required as a matter of urgency due to the ingress of water into the flats below. A copy of the quotation from the contractor engaged was provided which described the works and indicated a price of £3,780.00 including VAT.
4. The Property is a purpose-built development consisting of 9 self-contained flats in 2 blocks. Block 1 consists of flats 6 - 8 and block 2 consists of flats 9 - 14. Each block has its own front entrance door that leads directly into a small lobby area. There is a single concrete staircase in each block that provides access and egress to the upper floors. There is a rear access and egress door within both blocks. The development benefits from a car park to the side and a small garden area to the rear with a cycle store. The total cost of the qualifying work 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.
5. Directions were issued on 28 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 24 February 2025. No request was received.
6. The Directions required the Applicant to send by 10 February 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; andTo file with the tribunal confirming that this had been done and stating the date on which this was done.
7. On 6 February 2025 the Applicant's Representative confirmed that this Direction had been complied with and the bundle and Directions had been sent to all leaseholders via email and first-class post.

8. If the Respondent Leaseholders wished to oppose the Application the Directions required them to do so via an attached reply form by 24 February 2025. No forms or representations were received from the Leaseholders.

The Law

9. 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.
10. 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.
11. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out in Annex 2 of this Decision and Reasons and this is an Application for such dispensation.
12. References to “tenants” includes “leaseholders” and vice versa.

Submissions & Evidence

13. The Applicant provided a bundle to the Tribunal which included:
- A copy of the Lease for Flat 7,
 - Application to the Tribunal,
 - Tribunal Directions,
 - Applicant’s confirmation regarding compliance with Directions,
 - Quotations from two contractors:
 - Pyramid Solutions of £5,180.00 plus VAT
 - IDC Roofing and Leadwork Specialists Limited of £3,780.00 including VAT
 - Copies of several e mails and photographs indicating the necessity and urgency of the work.

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

14. The Lease is between the Tenant and the Developer who is the Freeholder and the Company, Brockett Hollow Management Limited which has a Lease of the Block and provides the services specified in the Fifth Schedule, for a term of 125 years from 1 October 2024. The relevant provisions of the Lease are:
- a) Clause 1 of the Lease sets out the Definitions which include:

- 1.1 “Annual Maintenance Provision” means the aggregate amount estimated to be required to be provided to cover the expenditures referred to in paragraph 1 of the Third Schedule.
 - 1.5 “Maintenance Year” means every twelve-monthly period ending on the 30th day of September the whole or any part of which falls within the Term
 - 1.10 “Service Charge” means a sum equal to the Service Charge Fraction (or such other proportion as may be determined pursuant to paragraph 3 of the Third Schedule) of the aggregate Annual Maintenance Provision for the whole of the Block for each Maintenance Year (computed in accordance with paragraph 1 of the Third Schedule)
- b) The Third Schedule Part 1
- 1. The Annual Maintenance Provision in respect of each Maintenance Year ... will consist of a sum comprising:
 - 1.1 the expenditure estimated as likely to be incurred in the Maintenance Year by the Company for the purposes mentioned in the Fourth Schedule...
- c) The Fourth Schedule sets out the purposes for which the Service Charge is to be applied which includes:
Payment of Costs of maintenance and repair of the Block
- 1. To pay all costs and expenses incurred by the Company in carrying out its obligations to decorate, maintain and repair and provide the services Specified in the Fifth Schedule and in carrying out such other works of decoration, maintenance and repair of the Block and/or Estate as are deemed necessary by the Company to maintain the Block and/or Estate as good class residential flats or otherwise desirable in the general interest of the tenants of the flats in the Block.
- d) The Fifth Schedule Part 2 sets out the Company’s Covenants
- 2.2 To keep the interior and exterior walls and ceilings and floors of the Block and the whole of the structure roof foundations and main drains boundary walls and fences of the Block (but excluding such parts thereof as are included in the Flat by virtue of the definition contained in Part 1 of the First Schedule and the corresponding parts of all other flats in the Block) in good repair and condition
- e) The Sixth Schedule sets out the Tenant’s covenants which includes
- 1.2 in respect of every Maintenance Year to pay the Service Charge to the Company by two equal instalments in advance on the Payment Dates

15. The Application Form stated that:
16. There was a Leak from where the roof over the bay window of Flat 7 meets the external communal wall causing serious damage to flat 7's window, walls, and ceiling. A temporary repair was carried out but this this did not hold.
17. The section 20 consultation Notice of Intention and Statement of Estimates stages were commenced and two quotations were obtained but further water ingress occurred and the repairs were required as a matter of urgency as there were health and safety concerns regarding the Tenants of Flat 7. The cheapest quotation was from Billy Baxter of IDC Roofing and Leadwork Specialists Limited, who is a contractor who knows the Development and therefore he was instructed to carry out the work.
18. At around the same time as the work was being carried out the Application was made for dispensation from the consultation procedure required under section 20. Directions were issued and in accordance with these the Applicant sent a copy of its Application Bundle, including a copy of the Directions which provided instructions for the Respondents to oppose the Application if they wished. No objections were received.
19. Two estimates were obtained for repairing the bay window roof. These were:
 1. Pyramid Solutions Limited
 - To erect scaffolding
 - To strip out all roof coverings as necessary
 - To supply and install new OSB boards to bay window roof
 - To supply and install a new fibre glass roof covering
 - To re-instate lead flashing as necessary
 - To clear away all rubbish from site
 - To remove all scaffoldingTotal cost including labour and materials = £5,180 + VAT

2. IDC Roofing and Leadwork Specialists Limited

Attended site to investigate water ingress to bay window of flat 7.

Findings:

- there is water ingress to the perimeter of the bay window ceiling and down the walls
- the roof does not have any visible defects and the lead is the correct size and chased in to the external wall and sealed.

Conclusion:

- based on what we have seen on site it is my opinion that this is a roof build up issue relating to the insulation/ventilation detail.

- we need to install a new bay window roof with correct details.

Proposed works:

- erect scaffolding to bay window
- strip roof back to existing joists.
- install correct insulation detail. (until we expose the roof area, we will not know whether this will be a cold deck or warm deck detail)
- install new 18mm roofing grade o83 sterling board.
- install new bay window roof with correct falls

Cost of work. £3,150.00 + VAT

20. Copies of several e mails and photographs indicating the necessity and urgency of the work were provided which also gives a timeline for the work.

The Leak was reported in February 2024 and the following emails were provided:

22 February 2024 the Tenant's Agent requested work to be done to repair the leak as the damage was worsening and provided photographs.

27 February 2024 Applicant's Agent reports that the Contractor, IDC Roofing and Leadwork Specialists Limited, has carried out work in that the mortar joint has been raked out and lead plugs installed to secure the lead into the chase which was then re-pointed with lead sealant.

11 July 2024 Contractor again reports that further works have been carried out to make window water tight but clear that a more substantial repair is required.

1 October 2024 Estimate from IDF Roofing £3,150 + VAT

10 October 2024 Estimate from Pyramid £5,180 + VAT

9 & 11 October 2024 Photographs provided by Tenant showing ceiling of bay window waterlogged.

30 & 31 October 2024 arrangements being made for an insurance assessor to attend following completion of the works.

10 November 2024 Insurance claim agreed

13 November 2024 Invoice for £3,780 from IDF Roofing

Findings

21. The Tribunal finds from the Lease that the Landlord is obliged to make repairs to the roof of Flat 7 and that these are chargeable to the Tenants through the Service Charge.
22. 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 but can amount to a health and safety risk as it can result in damp and mould.
23. The Tribunal notes that repairs were carried out but that these were found to be insufficient and more substantial work was required. The Tribunal further finds

from the evidence of photographs provided and its knowledge and experience referred to above that the work was urgent.

24. The Tribunal found that two estimates were obtained for the work and that the lowest estimate was accepted. It was also found the Tenants made no representations following this Application for dispensation.
25. Therefore, considering the necessity and urgency of the work, that an opportunity was given to the Tenants to make representations the Tribunal finds that the Leaseholders have not suffered any relevant prejudice by the failure to carry out the consultation procedure in full.

Determination

26. 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.

27. 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) which the Applicant and its Representative have not been able to fulfil.
28. 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.
29. 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.