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

**Case reference** : **CAM/11UB/LDC/2014/0026**

**Property** : **6 / 7 Market Square, Buckingham,  
MK18 1NJ**

**Applicant** : **GEM Estate Management Limited**

**Representative** : **Mrs Camilla Page**

**Respondent** : **Various Leaseholders at 6 / 7  
Market Square, Buckingham as set  
out on the application**

**Representative** : **None**

**Type of application** : **To dispense with the requirement  
to consult lessees about major  
works (s20ZA Landlord and Tenant  
Act 1985)**

**Tribunal members** : **Tribunal Judge Dutton  
Mr D Barnden MRICS**

**Decision venue and  
date** : **5th December 2014 at Buckingham  
Villiers Hotel, Buckingham**

**Date of Decision** : **9th December 2014**

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**DECISION**

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## DECISION

**Having considered the papers, inspected the premises at 6/7 Market Square, Buckingham (the Premises) and heard from Mrs Page at the hearing we are satisfied that it is reasonable to grant dispensation from the consultation requirements set out at section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the Service Charge (Consultation requirements)(England) Regulations 2003. This dispensation does not preclude the Respondents, or any one of them, challenging the reasonableness of the works as provided for at sections 19 and 27A of the Act.**

### BACKGROUND

1. By an application dated 14th November 2014 GEM Estate Management Limited (GEM), the Applicant, sought dispensation from the consultation requirements under s20 of the Act, pursuant to s20ZA.
2. The Application gives the following explanation as to why dispensation from the consultation process is sought: *“There is a leak from the roof. Due to the height and limited accessibility scaffolding is required. This alone takes the cost over the section 20 threshold. The actual repairs will not be known until access is available to investigate the cause of the leak”* It is said that the need to apply for dispensation is because *“The work needs to be undertaken as soon as possible to prevent further damage to the property”*
3. Prior to the hearing we were provided with a copy of the lease to flat 7A, which appeared to be the property suffering from water ingress. In addition we received a short statement of case dated 17th November 2014 prepared by GEM, the contents of which we noted, a copy of a report from DS Property Solutions Limited dated 15th October 2014 setting out details of their site visit and findings together with recommendations, a quote for the scaffolding at £2000 plus VAT and a copy of the letter sent by GEM to all leaseholders advising them of the application. In response thereto Mrs Turner the owner of flat 7 had written to the Tribunal on 25th November 2014, the contents of which were noted by us.

### INSPECTION

4. 6 and 7 Market Street, Buckingham comprises a terraced building with shop units on the ground floor, and 6 flats on three upper floors. The Premises are thought to date from the early 19th century. They are constructed of brick at front, brick and part stone at rear, with slate roofs, wooden windows, iron gutterings and downpipes
5. Both roof coverings appear in good condition, and the roof over 7 Market Street shows signs of renewal within the last 10-15 years. The external joinery of both properties is in need of repainting, and the woodwork needs repairing in places. Part of the guttering is coming away from the wall at the rear of the property.

6. It was possible to view the front and rear elevations of the Premises, and the Tribunal were given access to flat 7A, which was on the second floor. This one bedroomed flat is generally in reasonably good decorative order. However the bedroom ceiling is showing signs of water ingress, and there was some mould growth on the ceiling of the adjacent bathroom. The mould growth was likely to be due to condensation. Given its location the leak above the bedroom ceiling may relate to flashings around the dormer window above.

## **HEARING**

7. At the hearing held after the inspection, we heard from Mrs Page from GEM. She indicated that dispensation was sought both for the erection of scaffolding and investigation thereafter but also such works as may be required to prevent ongoing water ingress to flat 7A. She told us that the Applicant was intending to externally decorate the Premises next year.
8. In answer to questions from us she confirmed that GEM was the head lessor of the Premises, the freeholder being Trumros Limited. She was also able to confirm that there was no business association with DS Property Solutions Limited, other than a trading one.

## **THE LAW**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

## **FINDINGS**

9. At the inspection we were able to see the evidence of water ingress into the bedroom of flat 7A. The tenant has a young child. Apart from Mrs Turner, no leaseholder has raised any objection to the dispensation application. In truth Mrs Turner's concerns are directed to matters that can be considered, if required, under the provisions of s27A of the Act and do not, in reality go to the issue of dispensation. She had indicated in the letter to us that she would be attending the inspection and the hearing but not do so. The site is quite difficult to access and undoubtedly scaffolding is required to reach the roof level. We accept that it is not until such access can be facilitated that the cause of the water ingress can be discovered and addressed. It is to be hoped that the problem is as suggested in the inspection element of this decision. Dispensation is therefore granted by us from the consultation requirements to enable the erection of scaffolding, investigation work and repairs. It is not to be taken that such dispensation would run to extensive works to the roof or the dormer window, which certainly needs some attention as could be seen when we inspected. It will be for the Applicant to consider the extent of the work that can be realistically undertaken without further referral to the leaseholders.
11. In reaching our decision we have borne in the mind the relevant provisions of the Act and the Supreme Court decision in *Daejan v Benson*. The repairing covenants, for which the Applicant has responsibility, include the maintenance of the structure of the Building as defined in the lease, which includes the roof.
12. It should be noted however, that such dispensation does not remove the need for the Applicant to satisfy the provisions of section 19 of the Act as to

the reasonableness of the works, in particular the standard and the costs.  
Any Respondent unhappy with those elements has the protection afforded  
them by s27A of the Act.

*Andrew Dutton*

Tribunal Judge Andrew Dutton

9th December 2014.