



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

Case Reference	:	CAM/00MA/LDC/2020/0008
Property	:	1-36 Tudor House, South Lynn Crescent, Bracknell, Berkshire RG12 7LN
Applicant	:	Silva Homes Limited
Respondents	:	The leaseholders of the Property, as set out in this decision
Type of Application	:	For dispensation with the consultation requirements under Section 20ZA of the 1985 Act
Tribunal Members	:	Mrs M Hardman FRICS IRRV (Hons) Judge David Wyatt
Date of Decision	:	15 April 2020

DECISION

The Tribunal's decision

The Tribunal determines under Section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in relation to the works described in the application form and the report from the Applicant dated 26 March 2020.

Reasons for the Tribunal's decision

The application

1. The Applicant seeks a determination under Section 20ZA of the Landlord and Tenant Act 1985 (as amended) (the “**1985 Act**”) to dispense with the consultation requirements prescribed by Section 20 of the 1985 Act and the Service Charges (Consultation etc) (England) Regulations 2003 in respect of works to replace defective metal guttering at the Property.
2. The tribunal has jurisdiction to grant dispensation under Section 20ZA of the 1985 Act if satisfied that it is reasonable to dispense with the consultation requirements. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.
3. This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.

The Property

4. The Property is described in the application form as a four-storey residential block with 36 one and two bedroomed self-contained flats. In the application form, 25 of these flats are said to be leasehold and the remaining 11 are said to be for general housing needs.

The Respondents

5. The application is made against the 25 leaseholders. Their details have been redacted from the copy application form provided but they appear from the Applicant's letters to them to be the leaseholders of flats two, four, five, six, seven, nine, 10, 11, 12, 13, 16, 17, 18, 19, 20, 22, 24, 25, 27, 28, 29, 30, 32, 34 and 36 (the “**Respondents**”).

The background

6. Case management directions were given on 12 March 2020, requiring the Applicant to serve copies of the application form and the directions on the Respondents. The directions contained a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant.
7. By e-mail dated 17 March 2020, the Applicant certified to the tribunal that these documents had been sent to all leaseholders by first class post. With the bundle produced by the Applicant pursuant to the directions, the Applicant has produced copies of the relevant letters.

8. The directions provided that this matter would be determined based on the documents, without a hearing, during the seven days commencing on 13 April 2020 unless any party requested an oral hearing.
9. A hearing was not requested. Accordingly, this application has been determined based on the documents produced by the Applicant. On reviewing the documents, the Tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined.

The Applicant's case

10. In its application form (as served on the Respondents), the Applicant said that:
 - (i) the guttering at the Property was made of pressed aluminium;
 - (ii) in late January 2020, a section of the guttering fell from its fixings as a result of the high winds and other weather conditions;
 - (iii) since then, other sections of the guttering had been pulled from their fixings and were hanging from the fascia board, such that there was a risk of these sections of aluminium guttering falling onto the pedestrian and grassed areas below;
 - (iv) sections of guttering had become twisted and would be difficult to reinstate; the Applicant proposed to replace the aluminium guttering on both sides of the Property with 10mm PVCu guttering, connecting this to the existing rainwater downpipes;
 - (v) these works were estimated to cost each leaseholder £550; and
 - (vi) in view of the health and safety risks, the works were urgent.
11. As explained below, none of the Respondents have replied to challenge any of these statements.
12. The Applicant has also produced a report dated 26 March 2020, following a further inspection on 18 March 2020. This confirms the problems described in the application form. It includes photographs of a loose section of guttering and a fallen section of guttering which would allow rainwater to run from the roof straight to the floor below, when it should be drained away from the walls of the building. Further, the Applicant says in this report that:

- (i) since this is a four-storey block, a full perimeter scaffold platform would be required to carry out the replacement works safely and would take time to erect;
 - (ii) sections of the timber fascia would need to be inspected when the scaffolding has been erected; some sections had been replaced or covered with PVCu material but some were in poor condition and may not provide adequate fixing for the guttering; and
 - (iii) the estimated costs of the work (exclusive of VAT) were £2,378 for parts and labour, £8,970 for scaffolding and a contingency cost, for replacement or covering the timber fascia boards if that proved necessary, of £2,500.
13. These estimated costs appear to be in line with the initial cost indication provided in the application form. The Applicant says in the report that these cost estimates were provided by Axis Europe Ltd and that it appointed this contractor to carry out responsive and planned roof repair and replacement work for the Applicant following an open market procurement exercise, selecting Axis Europe Ltd because they demonstrated their ability to deliver the relevant work and offered “*not only competitive prices but added value to [the Applicant] in their tender bid*”.
14. In the event of any issue in future in respect of the reasonableness of the costs incurred, the Applicant may need to provide more information. However, the tribunal does not need further information for the purposes of this determination.
15. The Applicant indicated in the report that, in view of the urgency, it was arranging for the works to be carried out without delay, using a site manager and resident liaison manager provided by Axis Europe Ltd.
16. It appears that, by letters dated 31 March 2020, the Applicant sent copies of this report to the Respondents and answered questions which some Respondents had asked in the interim, as explained below.

The Respondents’ position

17. As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant. Neither the Applicant nor the tribunal has received any response or statement of case opposing the application.
18. The Applicant has informed the tribunal that it did receive other feedback from leaseholders. It has produced copies of its letters of 31

March 2020 to the Respondents reporting and answering this feedback as follows:

Q: *“How will we be billed, and will we be expected to pay in one payment?”*

A: *“Invoices will be sent out when works are complete and First Tier Tribunal ruling has been made ... Residents who can't afford to pay the invoice in full should contact us on receipt of the invoice and we can look at payment arrangements based on individual circumstances.”*

Q: *“I'm worried that parts of the guttering will fall and hurt someone”.*

A: *“We carried out a new inspection on the 18th of March 2020 and based on the findings works are to commence as soon as possible. Please see enclosed report for dates and details of works to be done.”*

19. In the circumstances, the tribunal concluded that the application was unopposed.

The Tribunal's decision

20. The application was not opposed by the Respondents. The Respondents have not challenged the information provided by the Applicant, identified any prejudice which they might suffer if the consultation requirements are not complied with or provided any other information, apart from the concerns noted above.
21. In the circumstances set out in this decision, the tribunal is satisfied that the works were urgently required and appear to have been planned sensibly, allowing for the potential extra work in respect of the timber fascia which might be appropriate to secure the replacement guttering properly and/or while the scaffolding is erected. Accordingly, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the relevant works.
22. The tribunal determines under Section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the works described in the application form and the report from the Applicant dated 26 March 2020 as produced to the tribunal.
23. There was no application to the tribunal for any order under Section 20C of the 1985 Act.

Name: Judge David Wyatt

Date: 15 April 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).