



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

Case Reference : **CAM/26UF/LDC/2020/0024**

**HMCTS code
(paper, video, audio)** : **P:PAPERREMOTE**

Property : **Lyall Chambers, The Broadway,
Letchworth Garden City, Herts SG6
3XU**

Applicant : **Letchworth Garden City Heritage
Foundation**

**Applicant's
representative** : **Freeths LLP**

Respondents : **The leaseholders of the Property
(Flats 1-8)**

Type of application : **For dispensation from consultation
requirements - Section 20ZA of the
Landlord and Tenant Act 1985**

Tribunal members : **M Hardman FRICS IRRV(Hons)**

Date of decision : **30 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary and all issues could be determined on paper. The documents that I was referred to are in a 55-page bundle from the Applicant's representative together with a series of e-mails from a leaseholder and the Applicant's representative. I have noted the contents and my decision is below.

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 roof repair works described in the application form and statement.

Reasons for the tribunal's decision

The application

1. The Applicant applied for retrospective dispensation from the statutory consultation requirements in respect of qualifying works to repair the roof at the Property.
2. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
3. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
4. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.
5. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.**

The Property, the parties and the leases

6. The Property is described by the Applicant as a 4-storey Grade 2 listed building. There is commercial space (vacant at the date of the application) to the ground floor and 8 flats to the first, second and third floors. The application was made against the leaseholders of the flats (the “**Respondents**”). The Applicant is the landlord under the relevant leases.

7. The specimen lease produced by the Applicant includes a covenant by the landlord to maintain repair decorate and renew and keep in good and substantial repair at all times the main structure, including the roof, of the building (clause 4.5.1) and a covenant by the leaseholder to pay the proportion of relevant costs as set out in 6.1.4 and the Service Charge spreadsheet annexed to the lease.

Procedural history

8. The Applicant said that the proposed roofing works were urgent, as explained below. Case management directions were given on 15 October 2020, requiring the Applicant, by 26 October 2020, to serve on the Respondents copies of the application form and these directions.
9. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 13 November 2020.
10. The directions further provided that this matter would be determined on or after 23 November 2020 based on the documents, without a hearing, unless any party requested an oral hearing.
11. No leaseholder formally responded and no party has requested an oral hearing. However, one of the leaseholders, Paul Urban, responded direct to the tribunal by email on 23 November 2020. His representations are set out below, as is the response from the Applicant.
12. On reviewing these documents, which included colour photographs of the roof, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant's case

13. In the application form (as served on the Respondents), the Applicant said that the roof needed to be repaired. The works were said to have been urgent, as flat 7 was suffering from water ingress. An initial consultation notice is said to have been sent but the applicant maintains that it was not possible to invite the respondents to make observations and nominate a contractor within the 30-day period prescribed.
14. The works were carried out between 28 July 2020 and 5 September 2020. Initial work was carried out by Engie Limited who erected scaffolding to the rear of the building and carried out a temporary repair to the valley gutter using a liquid waterproof membrane to arrest a water

leak into Flat 7. The Respondent is claiming that there is no evidence that this work was carried out – see paragraph 16

15. In response the Applicant's representative states that it was confirmed to him by his client's managing agents, Rapleys LLP, that the temporary repair had been carried out. And that since the date of the application, it has been confirmed to Rapleys LLP by the main contractor, Engie, that the temporary repair was carried out by Engie's subcontractor, D & R Roofing.
16. It also states that it believes that they are not issues that they consider relevant to the application for dispensation. They may be issues that go to the reasonableness of the service charge itself and that Mr Urban had already said that he and the other Respondents do not contest this application.
17. On 29 August 2020 the Applicant's contractor, Riteshield Roofing Limited commenced work to replace the existing lead guttering with new material using the scaffolding in situ. It completed this work on 5 September 2020.
18. The total cost of all work undertaken was £9,840.96 including VAT.

The Respondents' position

19. 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 by 13 November 2020.
20. On 23 November 2020 Mr Paul Urban, leaseholder of Flat 1 Lyall Chambers wrote to the tribunal asking to be supplied with a copy of the bundle and stating that he could '*say with certainty (with supporting proof) that no actual liquid waterproof membrane repair took place as stated and described in the qualifying works Part 1, sub part 2. No repair works had taken place since the water ingress was first located and reported on 8th July 2020 and the repair being completed on 5th September 2020 - a period of 59 days. The non-repair also calls into question the cost incurred for the non-repair and could well be criminal.*'
21. He further went on to say that he had supplied a '*full and comprehensive report*' to the landlord and landlord's representative in this respect.
22. The tribunal asked that a copy of the bundle be supplies to Mr Urban and that the tribunal be supplied with a copy of the report. Both of these were done.

The tribunal's decision

23. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
24. This tribunal is proceeding on the basis that the application for retrospective dispensation from the statutory consultation requirements in respect of qualifying works to repair the roof at the Property was not opposed by the Respondents.
25. The correspondence from Mr Urban appears to challenge whether the first repair by Engie was actually carried out, the choice of them as contractor and aspects of the cost, to include the scaffolding.
26. The tribunal agrees with the position of the Applicant that whilst these may go to the reasonableness of the service charge itself, they are not strictly relevant to the current application and there is no indication that Mr Urban did not believe the work was not required. Rather his report, which was read by the tribunal, indicates that repairs were indeed required.
27. As noted above, this decision does not determine whether the cost of these works was reasonable or payable under the leases, only whether the consultation requirements should be dispensed with in respect of them. In the circumstances, I am satisfied that it is reasonable to dispense with the statutory consultation requirements in relation to these roof repair works.
28. The tribunal therefore determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the roof repair works described in the application form and statement.
29. There was no application to the tribunal for an order under section 20C of the 1985 Act.
30. The Applicant landlord shall be responsible for serving a copy of this decision on all leaseholders.

M Hardman FRICS IRRV(Hons)

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).