FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/LDC/2020/0036**
Property	**:**	**25-46, Deanswood, Maidstone Road, London N11 2TQ**
Applicant	**:**	**Michael Richards & Co.**
Respondent	**:**	**The 22 leaseholders named on the application**
Type of Application	**:**	**For the determination of an application for dispensation from the statutory consultation requirements**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker**
Date and venue of Hearing	**:**	**Decided on the Papers**
Date of Decision	**:**	**25 January 2021**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of repairs to the roof of the property.

Reasons

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of repairs to the roof of the property.

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2. The application was received by the Tribunal on 24 February 2020. It stated that the roof to the property had been damaged in a storm on 9 February 2020. The felt sheet roof covering had completely lifted leaving material hanging off the building and the roof exposed. Internally, sections of ceiling had collapsed and water was leaking into flats and communal areas causing damage. Stage one of the consultation process had been issued. The supporting documents showed that estimates for replacing the felt roof had been obtained from two contractors. The work was considered urgent in order to prevent further damage within the building.

3. Directions were issued on 10 March 2020. They provided that the Tribunal would determine the application on the papers in the week commencing 13 April 2020 unless either party made a request for an oral hearing by 20 March 2020. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.

4. The directions also required the Applicant to do the following;
   (1) To convene a meeting of leaseholders by 17 March 2020 to explain and discuss the works (direction 2);
   (2) Immediately on receipt of the directions to send to each leaseholder a copy of the application and accompanying documents together with the directions and the Tribunal's covering letter, and to place a copy of those documents in the entrance hall of the block and to confirm that this had been done to the Tribunal by 18 March 2020 (direction 3).

5. Under the terms of the directions, leaseholders were required to complete a form indicating whether or not they consented to the application or not. These were to be returned by 23 March 2020.

6. The parties were required thereafter to provide bundles setting out their case.

7. In the interim the Covid-19 pandemic occurred, and it seems that the application was overlooked following the furloughing of a member of the Applicant's staff.

8. In a letter to the Tribunal dated 15 January 2021 the Applicant stated the following. Firstly, it had not been possible to comply with direction 2 – the convening of a meeting of leaseholders – because of the restrictions imposed because of the pandemic. However, it stated that the leaseholders were aware of the issue. Secondly, it confirmed that copies of the application and other documents had been sent to all leaseholders as required by direction 3, though it had not been possible to display it in the communal areas, again because of the pandemic. The Applicant enclosed its bundle as required by the directions.

9. No reply forms or other documents have been received from any leaseholders.

10. The relevant legal provisions are set out in the Appendix to this decision.

11. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The background

12. The property is a four storey purpose built block of 22 flats with garages to the rear. Photographs included with the application show that it has a flat roof.

The Lease

13. The sample lease provided shows that the agreement is a tripartite one between the landlord, the tenant and a maintenance company referred to in the lease as "the Company". Although evidence of this was not provided, there was no dispute that the Applicant is the successor in title of the Company.

14. The lease clearly allows for the Applicant to seek to recover costs of the repair of the roof as a service charge. Clause 2(34) requires each leaseholder to pay the Company 1/22nd of the amount spent by the Company in its performance of the covenants in the lease. These covenants include clause 5(1)(a) of the lease by which the Company covenants to "*maintain repair redecorate and renew";*

> *"The external walls and structure and in particular the roof gutters waste and rainwater pipes of the Building*".

The Issues

15. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs will be reasonable or payable.

The Applicant's Case

16. The Applicant's case is that following a storm on 9 February 2020 the felt sheet covering the roof has lifted leaving the material to overhang the building. This can also be seen in the supporting photographs. A section of ceiling in one of the flats has collapsed and there has been water damage in all other rooms of that flat, another flat and the communal areas.

17. A stage 1 notice under section 20 of the 1985 Act was sent to the leaseholders on 13 February 2020 notifying them of works to be carried out to the roof.

18. Quotes were sought from two contractors, the lower of which was for a sum of £3,750 plus VAT, a total of £4,500. (The Tribunal noted that a 1/22nd share of this sum would be £204.55 which would be less than the statutory threshold, which may mean that dispensation is not required in any event. Nevertheless, it considered the application as set out below)

The Respondent's Case

19. As previously explained, no objections or comments have been received from any leaseholders.

The Tribunal's Decision

20. The Tribunal deals firstly with the directions previously made. It accepts that the Covid-19 pandemic has made compliance with all the directions made on 10 March 2020 impossible. It is also satisfied that the leaseholders have been properly notified of the application and that none of them have raised any objections. That being the case, any failure to comply with the Tribunal's previous directions is hereby waived pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

21. The Tribunal is satisfied that the consultation requirements should be dispensed with. It is satisfied that the roof of the property is in urgent need of repair.

22. The Tribunal is satisfied that the leaseholders have been notified of the application and bears in mind that there has been no objection from any of them to it. It also bears in mind the limited scope of the issue before it. The purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. There is nothing before the Tribunal to suggest that the leaseholders would suffer any prejudice if this application were granted.

23. In all the circumstances the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Name: Tribunal Judge S.J. Walker **Date:** 25 January 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

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) the appropriate 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.]

Section 20ZA

(1) Where an application is made to the appropriate 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 –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.