



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

Case Reference : **CHI/45UE/LDC/2014/0034**

Property : **41-51 Hawkins Road, Tilgate,
Crawley, RH10 5NN**

Applicant : **Crawley Borough Council**

Representative : **Miss A Clarke, Leasehold Services
Manager**

Respondent : **Various lessees (see list on page 2)**

Representative : **None**

Type of Application : **To dispense with consultation about
major works pursuant to section
20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Judge E Morrison (Chairman)
Mr N I Robinson FRICS (Surveyor
member)**

**Date and venue of
Hearing** : **1 September 2014 at Crawley
Magistrates Court**

Date of decision : **4 September 2014**

DECISION

List of Respondents

Mr and Mrs MAK Fearnside (Flat 41)
Mr M and Mrs J Beesley (Flat 42)
Mr A C Debrett (Flat 47)
Mr and Mrs R Nathan (Flat 49)
Mr R Meeten and Mrs R Hayward (Flat 51)

The Application

1. Under an application dated 8 August 2014 the Applicant lessor applied under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation from the consultation requirements provided for by section 20 of the Act. The Respondents are the long lessees of their respective flats in the block.

Summary of Decision

2. The consultation requirements provided for by section 20 of the Act are dispensed with as regards the works identified in the application,

The Lease

3. The Applicant’s statement referred to the Eighth Schedule of the relevant leases which required it “To keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts) (i) the main structure of the Property including all foundations thereof all exterior and all party walls and structures and including all roofs and chimneys and every part of the Property above the level of the top floor ceilings...”.

The Inspection

4. The Tribunal inspected the property on the morning of the hearing, accompanied by Miss A Clarke, Mr T Glading, Mr D O’Keefe, and Mr T Cockerill on behalf of the Applicant, and Mr J Beesley the lessee of No.43. The block comprises a purpose-built block of 6 flats dating from the 1960s, within a terrace of other properties. The subject building is east-facing, on a corner, shaped as an inverted T, the bottom of the T running N-S. The main front elevation faces east. The pitched roof has two main elements at right-angles to each other also forming a T, with two valleys where the pitches abut each other. The Tribunal was shown a bowing but temporarily repaired ceiling within the first floor open air common part directly underneath one of the valleys, and was told that due to water penetration through this valley the ceiling had become

dangerous and had been taken down. The Tribunal saw a second valley to which there was scaffold access. A small area of making good to the verge of the N-S tiled roof just above gutter level to the NW corner of the gable end was also noted. Scaffolding was also in position to give access to the two chimneys on N-S roof. The application referred to the fitting of two universal lead slates to soil vent pipes but it was noted that the proposal related to one gas flue only on the N-S roof. The works have required four individual scaffold sections to access the valleys and chimneys respectively.

Procedural Background

5. Directions were issued on 14 August 2014 providing for an urgent determination of the application.

Representation and Evidence at the Hearing

6. The Applicant had prepared a statement of case and a Bundle for the hearing, which incorporated other relevant documents including correspondence with the Respondents. A letter dated 27 August 2014 from Mr M Fearnside, the lessee of No. 41, was also before the Tribunal. Miss Clarke, Leasehold Services Manager, attended the hearing along with Mr T Glading, a surveyor, and Mr D O'Keefe, an assistant surveyor, all employed by the Applicant. Miss Clarke took the lead in presenting the Applicant's case at the hearing, assisted by her colleagues. None of the Respondents attended the hearing to make representations, although Mr Beasley of No. 43 attended as an observer.

The Law and Jurisdiction

7. By section 20 of the Act and regulations made thereunder, where there are qualifying works, there is a limit on the amount recoverable from each lessee by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal. In the absence of any required consultation, the limit on recovery is £250.00 per lessee.
8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987. Schedule 3 sets out the requirements where the works fall within the scope of a qualifying long term agreement. The lessor must serve each lessee with a notice describing the proposed works, stating why they consider the works to be necessary and the estimated cost, and inviting observations. The lessees then have 30 days to make observations with respect to the

proposed works or the estimated costs. The lessor must have regard to these observations and provide a written response within 21 days.

9. A lessor may ask a tribunal for a determination to dispense with all or any of the consultation requirements and the tribunal may make the determination if it satisfied that it is reasonable to dispense with the requirements (section 20ZA).

The Evidence and Arguments

10. The Applicant Council's case was that following an emergency call-out on 28 July 2014 it was discovered that the ceiling in the first floor common part was bowed, and it was taken down. This was directly below one of the roof valleys. Scaffolding was erected within a few days and inspection of the roof revealed that both valleys were "in danger of collapse". Water ingress through the chimneys was also noted, and other more minor high-level repairs identified. The Council decided to proceed with all the works on the basis that the valleys were urgent and the rest of the works could sensibly be done at the same time. On 6 August 2014 the Council wrote to each lessee liable to service charges (5 of the 6 flats) informing them of the scope and estimated cost of the works. The letter concluded : *"In view of the emergency nature of the works the Council feels that it is reasonable for it to proceed without entering into statutory consultation with leaseholders. If you have concerns about your statutory consultation rights in this matter please contact us within three days from the date of this letter"*.
11. On 1 April 2010 the Council entered into a qualifying long term (10 year) agreement with MITIE Contractors for repair and maintenance work to the Council's housing stock. MITIE were therefore instructed to undertake the works.
12. By the date of the application on 8 August 2014, the works had begun. They are now nearing completion.
13. In answer to questions from the Tribunal, Mr Glading accepted that not all of the works were urgent, and even in respect of the valleys, it would have been possible to effect a temporary repair and then undertake consultation. However the Council believed the way they had proceeded was also reasonable.
14. The Bundle contained file notes of conversations between the Council and three lessees on various dates between 21 and 26 August 2014. None of these lessees had formally objected to the application to dispensation. One lessee specifically supported the application. The only lessee who had expressed concern was Mr Fearnside. In his letter of 27 August 2014 he referred to earlier major works, where the knowledge of estimated costs as revealed by the consultation process had enabled him successfully to challenge the actual costs when these

exceeded the estimate. For this reason he felt it was important to follow the consultation process.

Discussion and Determination

15. The Supreme Court has given guidance on how the tribunal should approach the exercise of its discretion under section 20ZA: *Daejan Investment Limited v Benson et al* [2013] UKSC 14. The tribunal should focus on the extent, if any, to which the lessee may be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the lessor to rebut it.

16. Applying those principles to this application, the Tribunal is unable to identify any prejudice that the lessees have suffered or are likely to suffer if dispensation is given. Where a long term qualifying agreement is in place, as here, the consultation requirements are far less onerous than otherwise, and the scope for prejudice is correspondingly much more limited. The lessees do not have the opportunity to nominate contractors or to consider competing estimates. There was no evidence before the Tribunal that the failure to consult will result either in the lessees paying more or in inappropriate work being carried out. Moreover by its letter of 6 August 2014 the Tribunal provided the lessees with substantially the same information as would be given in the formal consultation process. The lessees have had over 3 weeks to consider this information and 4 of the 5 long lessees have responded. None of the lessees have suggested any of the work is unnecessary or the cost excessive. Mr Fearnstone's concern is met as he has been informed of the estimated cost. Although the Tribunal believes that it would have been quite possible to undertake a temporary valley repair and then to consult on all the proposed works, it has to be said that proceeding with a full repair immediately has saved the costs of a temporary repair. All in all it cannot be said that the Council has acted unreasonably having regard to the lack of evidence of prejudice, and the Tribunal decides that it is reasonable to dispense with the consultation requirements in respect of the works.

Concluding Remarks

17. This decision relates only to the consultation requirements. It does not determine the reasonableness or payability of future service charges in respect of the works, and the lessees remain free to challenge any or all of those charges under sections 19 and 27A of the Act.

Dated: 4 September 2014

Judge E Morrison (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.