



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

**Case Reference** : **CHI/24UP/LDC/2015/0050**

**Property** : **Old Market House, 1 Market Lane  
Winchester SO23 9AL**

**Applicant** : **Conegate (2003) Limited**

**Representative** : **Sean Dooley of Chainbow Limited**

**Respondents** : **Edward Asante, Michael Roberts &  
James Fudge**

**Representative** : **Unrepresented**

**Type of Application** : **To dispense with the requirement  
to consult lessees about major  
works**

**Tribunal Members** : **Mr R T A Wilson (Tribunal Judge)  
Mr Andrew Mackay FRICS (Valuer  
Member)**

**Date of Inspection and  
Determination** : **18<sup>th</sup> December 2015**

**Date of Decision** : **22nd December 2015**

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**DECISION**

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### **Decision of the tribunal**

- (A) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the following works (‘the Qualifying Works’) at Old Market House, 1 Market Lane, Winchester SO23 9AL (‘the Building’):

*Site: Patio area first floor 1 Market Place Winchester*

- *Remove decking and slabs and set aside*
- *Clean area below slabs and paint with sealant*
- *Allow to dry*
- *Clean and rod any down pipes*
- *Relay slabs and decking in such a way so as to leave any outlets accessible and exposed*

- (B) No terms are imposed on the grant of dispensation.

### **The application**

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 16<sup>th</sup> November 2015.
2. Directions were issued on 17<sup>th</sup> November 2015. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties have objected to this allocation or requested an oral hearing. The paper determination took place on 18<sup>th</sup> December 2015 following the tribunal’s inspection of the Building.
3. The Applicant supplied the tribunal with a bundle of relevant documents in accordance with the directions. This included copies of the application, the directions, the Applicant’s statement of case, response forms, relevant correspondence and a sample lease.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

5. The Building is a period property, which has been converted into a mixed-use development of two shops, two flats and a house. The Applicant is the freeholder of the Building and the Respondents are the residential leaseholders. It is said that part of the roof is leaking causing damage to the fabric of the building and damage to the house and that the Qualifying Works are required to remedy this situation.
6. The Applicant seeks prospective dispensation from full leaseholder consultation in relation to the Qualifying Works.
7. The grounds of the application are set out in the application form and in the Applicant's statement of case and can be summarised as follows:
  - (a) The Applicant has partially completed a section 20 consultation exercise for minor roof repairs to the balcony area of the house. The papers include a short letter from John Parsons Building Services Limited detailing and estimating the cost of repairs to be £1910 exclusive of VAT.
  - (b) The Applicant wishes to start the Qualifying Works as soon as possible, as there is water penetration. This is having a detrimental impact on the fabric of the Building and the interior of the house. It is said that the water penetration is likely to accelerate with heavier rainfall and winds over the winter months. The Applicant wishes to dispense with the second stage of the consultation procedure as this will result in further delay of at least a month if not longer.
  - (c) The Qualifying Works will commence at the earliest practical opportunity once the tribunal makes a determination.
8. Paragraph 6 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they supported the application. Completed forms were filed by two of the leaseholders, both of whom indicated their support. There was no opposition to the application and no written representations from the Respondents identifying any prejudice or proposing any terms as a condition of granting dispensation.

## **The inspection**

9. The tribunal inspected the Building on the morning of 18<sup>th</sup> December 2015. The Building occupies a corner location in the city centre of

Winchester close to the high street and the cathedral. It comprises a virtually detached period property arranged on ground and first floors and is currently configured as two shops fronting the high street, 2 flats accessed from Market Street and a house approached from Market Lane. The tribunal was told that the conversion was carried out approximately ten years ago and originally the Building formed the market place for the town.

10. Ms Tonia Crake-Goulden a residential agent for the leaseholder of Flat 2 was in attendance at the start of the inspection but she had no knowledge of the application or where the alleged water ingress was taking place. Whilst she was able to grant members of the tribunal access to Flat 2 on the first floor, it soon became apparent that this was not the affected flat. As she was unable to further assist the tribunal in any way she left. Members of the tribunal then knocked on the door of Flat 1 also on the first floor and the occupier was able to confirm that the affected property was the house occupied by Mr Asante and accessed from the ground floor. The tribunal then knocked on the door of the house. Mr Asante answered and invited the tribunal in to inspect the interior. He also granted the tribunal access to a patio area on the first floor where he said the problems originated.
11. The tribunal was able to see minor problems to the interior decorations with water stains evident at high level in the ground floor living room and peeling and cracked paint.
12. Mr Asante then took the tribunal to the first floor and from one of the bedrooms there was access to a small narrow balcony area situated immediately behind the front parapet wall. The balcony area is covered in paving slabs and wooden duckboards with an open gutter running around the front edge of the balcony floor. The outlets from 2 rainwater down pipes were seen at ground level but could not be traced from the 1<sup>st</sup> floor balcony.
13. The Applicant's case papers include a statement of case authored by Ms Susan Dougall of Cushman & Wakefield LLP in which she confirms that she is responsible for day-to-day management of the Building. It is implicit in her statement that she concludes that the damage occurring to the house originates from defects to the balcony area inspected by the tribunal.

### **The tribunal's decision**

14. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act, in respect of the Qualifying Works. No terms are imposed on this grant of dispensation.

### **Reasons for the tribunal's decision**

15. The tribunal was not supplied with a surveyor's report or specification, giving precise details of the proposed works or establishing an urgent need for the works. Because of limited access the tribunal cannot conclude for certain that the damp problems are caused by defects to the patio area and it must rely upon the judgment of Ms Dougall. It is Ms Dougall's judgment that the balcony area is in disrepair which in turn is causing water penetration at ground floor level. It is also implicit in her statement that she is satisfied that the Qualifying Works are required and that there is a need for urgency.
16. The problems noted were not amongst the worst that the tribunal has seen but it was clear that there is water penetration to the interior of the house. The application refers to a leak to the roof and gutter above 1 Market Place and indicates that this leak is causing the water ingress. If the Applicant has correctly diagnosed the cause of the leak the proposed work should reduce the risk of water penetration to the house.
17. Embarking upon a full consultation exercise will take 3 months or longer and will significantly delay the commencement and completion of the works. Delay in this case is not desirable and could lead to an increase in the cost of the remedial works.
18. All of the Respondents that responded to the application have indicated their support and they account for over 50% of the residential units in the Building. There have been no objections and none of the Respondents has suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the Respondents has suggested that any terms should apply to the grant of dispensation.
19. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the Respondents from seeking a determination of their liability to contribute to the cost of the Qualifying Works, pursuant to section 27A of the 1985 Act, should they wish to do so.
20. Given the absence of a detailed specification, the definition of 'Qualifying Works' at paragraph (A) of this decision is necessarily brief. For the avoidance of doubt dispensation is only granted for the work specified in paragraph A and not for more extensive or different works.

**Name:** Tribunal Judge Wilson

**Date:** 22nd December 2015

## **Appeals**

1. Any party 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 which application must:-
  - a. be received by the said office within 28 days after the tribunal sends to the person making the application written reasons for the decision.
  - b. 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.
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.

## **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.

### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.



- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
  
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.