



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

Case Reference : **CHI/29UN/LDC/2015/0039**

Property : **33 Crescent Road, Ramsgate, Kent
CT11 9QX**

Applicant : **Kimmeridge Estates Ltd**

Representative : **Michael Richards & Co
(Managing Agent)**

Respondent : **The Lessees**

Representative : **None**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985
Application to dispense with
consultation procedure
covering proposed works**

Tribunal Members : **R Athow FRICS MIRPM**

Date of Inspection : **None**

Date of Decision : **21st December 2015**

DECISION

Decision

1. The Tribunal made the following determinations:

A dispensation from the consultation provisions of Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") is granted in respect of the repair to the roof valley and other works as specified in the invoice from Action Property Services dated 10th August 2015 as follows:

- 1 To erect scaffolding to front of building for access to main roof area.
- 2 To remove split valley and prepare area for new replacement.
- 3 To supply and fit new front valley, to replace missing and cracked slates.
- 4 To clear all debris and bird's nest to rear valley, to clear all hoppers and down pipes, gutters, etc. Leave clean and tidy.

No costs have been assessed for the above work by the Tribunal.

Background

2. The subject property comprises four self-contained flats over four floors which are held on leases. The freehold is held by the Applicant.
3. The Applicant was notified by the lessee of Flat D on 31st July of a serious roof leak. Photographs of the damaged areas were included in the e-mail.
4. The managing agent made an application for dispensation from the consultation provisions of Section 20 of the 1985 Act in respect of these works which was received by the First-tier Tribunal Property Chamber (Residential Property) on or before 22nd September 2015.
5. Directions were issued by the First-tier Tribunal Property Chamber (Residential Property) on 22nd September 2015, which stated that the application was to be determined on papers to be submitted without a hearing, in accordance with Rule 31 of the Tribunal Procedure Rules 2013, unless a party objected in writing to the Tribunal within 28 days of the receipt of those directions. No written objection to dealing with the application in that way has been received.
6. The directions required the parties to supply statements of their cases and for the Applicant to prepare a bundle of relevant documents for consideration by the Tribunal. No bundles have been received.
7. The service charge costs are shared between the four flats. As a result, any works undertaken in excess of £1,000 including VAT need to go through the Section 20 consultation process if the landlord is to recover the full cost. Failure to do this will result in the landlord being able to recover a maximum of only £250 from each flat in this block for that work. There is

within the Act and its Regulations a section which sets out a procedure for Dispensation under certain circumstances.

The Law

8. The statutory provisions primarily relevant to these applications are to be found in Section 20ZA of the Landlord & Tenant Act 1985 as amended (the Act).

9. Section 20ZA (1) of the Act states:

‘Where an application is made to a leasehold valuation 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.’

10. In Section 20ZA (4) the consultation requirements are defined as being:

‘Requirements prescribed by regulations made by the Secretary of State’. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 (‘the Regulations’).

11. In Section 20ZA (2) of the Act ‘qualifying works’ in relation to a service charge, means works (whether on a building or on any other premises) to which the tenant may be required to contribute by the payment of a service charge in accordance with the terms of his lease.

12. If the cost of any tenant’s contribution exceeds the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application are those set out in Part 2 of Schedule 4 of the Regulations.

13. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.

The Applicant’s case

14. Because the property is four storeys high, scaffolding needed to be erected to enable safe access to the roof to assess the extent of the defects which allowed the water penetration. When the inspection took place it was found that the lead flashing was cracked and, because of its age, had come to the end of its useful life and required replacement. Because of the serious leak the managing agent made the decision to order the works to go ahead

as a matter of urgency so as to prevent further water ingress and subsequent damage being caused. Whilst on site it was considered to be good practice as well as cost effective to check the rest of the roof. Some slates were broken or cracked and so these were replaced. A bird's nest was removed from the rear gutter as it was blocking the flow of water.

15. The Applicant's managing agent wrote to the lessees on 13th August 2015 informing them of the matter, the actions they had taken, and that the cost was £1,875.00. The letter explained that the leak was a serious one that needed to be attended to as a matter of urgency and could only be accessed via scaffolding. It was explained that the contractor was known to the lessees as they had carried out the external decoration to the block the previous year and the agent considered the work to be reasonable and competitive. They also explained that if the matter had not been attended to immediately, further damage would have occurred and this would have increased the overall cost. The agent had considered claiming on the buildings insurance policy, but decided not to as the fault was caused by general wear and tear and not from any insured peril.
16. The letter also stated that because of the urgency of the works they had not had the opportunity to carry out the normal Section 20 consultation process and consequently they would be applying for dispensation for these works in this instance.
17. No objections to the proposals have been received. One lessee has supported the Applicant's application for dispensation. Another stated that he had no comment to make.

Consideration and Reasons for the Decision

18. In cases where the repair of defects caused by water penetration are required the cost of which takes it above the threshold for consultation, the correct procedure is to make temporary repairs and then prepare a specification of works. Tenders are then obtained and the normal Section 20 Consultation process takes place.
19. In this instance the cause of the leak could not be assessed without the erection of scaffolding, and as soon as the cause and seriousness of the situation was assessed it was deemed that it should be dealt with as a matter of urgency. A major element of the cost of the invoice would undoubtedly be for the erection of scaffolding.
20. If the full Section 20 consultation had been carried out the scaffold would either have had to be removed and then re-erected, or left in place for the duration of the consultation period, which is normally in excess of 12 weeks. If the scaffolding was left in place it is likely that the hire cost would have increased. If removed and then re-erected the cost of the scaffold would probably have doubled.

21. Situations such as this are addressed in legislation by the inclusion of Section 20ZA of the Act and the landlord has promptly sought to regularise the situation appropriately. The Tribunal decides that the Landlord's actions, through its managing agent, does not cause significant prejudice to the Respondents as the work was needed to be undertaken to protect the integrity of the property.
22. Under the terms of the lease the landlord has an obligation to maintain the structure of the building.
23. The Tribunal was satisfied that once scaffolding had been erected, the correct action was taken to mitigate the damage and that there was no prejudice to the lessees. The works found to be needed are deemed to be necessary to comply with the Applicants obligations under the lease.
24. For the sake of clarity the Tribunal has not considered the matters of reasonableness, suitability or standard of the works undertaken to date. Any disputes on these aspects are dealt with by an application under Section 27a of the Landlord and Tenant Act 1985.

R Athow (Valuer Chairman)

Dated 21st December 2015

Appeals

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.

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.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include, together 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.

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.