



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

**Case Reference** : **BIR/00CN/LDC/2020/0004**

**HMCTS** : **P:PAPERREMOTE**

**Property** : **Flats 65, 67, 69, 71, 73 & 75 Regency House  
Nash Square Birmingham B42 2EX**

**Applicant** : **The Trustees of the Locker Foundation**

**Representative** : **Proxim Property Management Ltd**

**Respondents** : **The long leaseholders of Flats 65, 67, 69, 71,  
73 & 75 Regency House**

**Type of Application** : **An Application under Section 20ZA of the  
Landlord and Tenant Act 1985 for  
dispensation of the Section 20 consultation  
requirements.**

**Tribunal Members** : **Vernon Ward BSc (Hons) FRICS  
Judge David R Salter**

**Date of Decision** : **6 August 2020**

---

**DECISION**

---

## **Background**

- 1) By an application received on 30 June 2020, the Applicant sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) from all/some of the consultation requirements imposed on the landlord by section 20 of that Act.
- 2) The justification for the application was that the Applicant aims to carry out urgently required roofing works to the front side elevation of the Property. The works are considered urgent as there is a risk of ceilings collapsing and water ingress to the communal staircase with health and safety implications.
- 3) By Directions dated 30 June 2020, the Applicant was instructed to send to the Tribunal and the Respondent leaseholders, a bundle incorporating the following documents:
  - a) A statement explaining the purpose of the application and the reason why dispensation is sought.
  - b) Copies of any letters already sent to leaseholders regarding the proposed works.
  - c) Copies of any specialist reports obtained in respect of the proposed works.
  - d) Quotations in respect of the proposed works together with any other appropriate material.
  - e) Reference to the lease provisions that allow the cost of these works to be charged back to the leaseholders as service charges
- 4) Any Respondent who wished to comment on the application was invited to submit a statement to the Tribunal and the Applicant by 30 July 2020.
- 5) Under normal circumstances the Tribunal would have carried out an inspection of the Property before making its determination in respect of this matter however, in view of the current Covid-19 Public Health Emergency, the Tribunal proposed to determine the application without an inspection of the Property unless any party objected by 23 July 2020. The parties were invited to provide more information in their submissions, particularly photographs to mitigate the lack of an inspection.
- 6) None of the parties to the application objected to the matter being determined without an inspection.

- 7) The Applicant had indicated that they were content with a paper determination. Any Respondent who required an oral hearing, were invited to notify the Tribunal upon making their submissions. None of the parties to this application requested a hearing, accordingly the Tribunal determines this matter on the basis of the written submissions of the parties without an inspection of the Property.

### **The Submissions of the Parties**

- 8) The Applicant's statement explained that at the end of February 2020, storm water was penetrating the roof and leaking into the main stairwell. Droitwich Roofing & Building Specialists Ltd, a contractor, reported that the roof tiles needed to be lifted, cracked tiles replaced along with battens and a new layer of breather felt installed.
- 9) The Applicant stated that the water ingress into the main staircase was a potential health and safety issue as residents and visitors could slip on the wet floors. The layout of the roof is such that *any* rainfall will make its way to the communal areas.
- 10) The Applicant had obtained three estimates, copies of which were provided to the Tribunal. These can be summarised as follows:

Droitwich Roofing & Building Specialists Ltd	£10,344.00 inc VAT
Brindley Asphalt Limited	£4,486.80 inc VAT
Ground Up Property Services Ltd	£4,500.00 inc VAT

- 11) The Applicant further stated that as they had noted that the cost of the works was likely to exceed the consultation threshold of £250.00 (including VAT) per leaseholder, they had written to the leaseholders concerned on 25 June 2020, explaining that due to the urgent nature of the works, the Applicant did not intend to carry out the consultation procedures but intended to apply to the Tribunal for dispensation from those procedures.
- 12) The Applicant stated that they had accepted the quote of Brindley Asphalt Limited and at the time of their submission were awaiting a start date.
- 13) There were no submissions made by the Respondent leaseholders.

### **THE LEASE**

- 14) The application before the Tribunal relates to dispensation alone. However, the Tribunal notes the following provisions within the lease, dated 14 February 1966 as follows:

Clause 4 (23) (Covenants by the Lessee) states:

*“To pay the due proportion attributable to the said flat and garage of the cost of the maintenance repair renewal and insurance of the said Block of Flats and common gardens grounds and drives and provision of services as more particularly specified in the First Schedule hereto”*

The First Schedule states (as far as relevant) as follows:

1.....

2. *The maintenance repairing and renewing of the following matters or things used or enjoyed by the Lessee in common with the Lessor and other Lessees or Tenants of the said Block of Flats :-*

(a) *The roofs gutters pipes and other things for conveying rainwater from the said building*

(b) .....

(c) *The passages staircases landings entrances or other parts of the said Block of Flats enjoyed or used by the Lessee in common with other Lessees or Tenants of the said Block of Flats Provided that this shall not extend to the cleaning of such parts and such cleaning shall remain the personal responsibility of the Lessee by virtue of Clause 4 (4) of this Lease*

## **The Law**

15. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.
16. There are essentially three stages in the consultation procedure, the pre-tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and, in some cases, a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.

17. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

### **The Tribunal's Determination**

18. It is clear to the Tribunal from the information supplied by the Applicant that works are urgently required to the roof of the property.
19. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. However, following the Supreme Court's judgment in *Daejan Investments Limited v Benson et al* [2013] UKSC 14, the Tribunal in considering whether dispensation should be granted in this matter should take into account the extent to which lessees/leaseholders were prejudiced by the landlord's failure to consult.
20. The Tribunal has been provided with three quotations and the Applicant intends to instruct Brindley Asphalt Limited who had submitted the lowest estimate.
21. The Tribunal is satisfied that the works are required and the Respondent leaseholders will not be prejudiced by the failure to consult. Accordingly, the Tribunal determines that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act. Dispensation is therefore granted.
22. Parties should note that this determination does not prevent any later challenge by any of the respondent leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.
23. In making its Determination, the Tribunal has had regard to the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

### **Appeal**

24. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal

Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD