



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

**Case Reference** : **BIR/47UC/LDC/2021/0004**

**Properties** : **111 – 113 Church Street Malvern  
Worcestershire WR14 2AJ**

**Applicant** : **Carole Martin**

**Representative** : **Taylor Clark Ltd**

**Respondents** : **Sally Dawson (Flat 1)  
John Roche (Flat 2)  
Harit Johal (Flat 3)  
Sadek Ahmed and Nadia Ahmed (Bay Leaf  
Indian Restaurant)**

**Type of Application** : **An application under section 20ZA of the  
Landlord and Tenant Act 1985 for  
dispensation of the consultation requirements  
in respect of qualifying works.**

**Tribunal Member** : **V Ward BSc Hons FRICS – Regional Surveyor**

**Date of Decision** : **28 May 2021**

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**DECISION**

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## **Background**

1. By an application received on 9 April 2021, the Applicant sought dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. Section 20 of the 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.
3. The Applicant is the freeholder of the subject property whilst the Respondents are the leaseholders of three flats and a commercial unit contained within the property.
4. The proposed qualifying works are the repointing of brickwork, the exterior decoration of window frames and the checking of gutters and downpipes. The Applicant has completed some of the statutory consultation requirements — serving notices of intention and obtaining quotations; but seeks dispensation from the further statutory requirements. The Applicant states that the works are urgent because the water ingress is causing damage to the interior of two flats (and flat 1 is said to be uninhabitable).
5. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be payable under the terms of the leases or reasonable.
6. The Applicant had indicated that they were content with a paper determination in this matter and no Respondent has requested an oral hearing. Due to the Covid-19 Public Health Emergency, the Tribunal has not carried out an inspection of the Properties. Accordingly, the Tribunal determines this matter on the written submissions of the parties.
7. The Tribunal’s directions of 14 April 2021 invited the Respondent leaseholders to comment on the application and confirm whether they supported the application or objected to it.

## The Submissions of the Parties

### The Applicant

8. The Applicant states that water ingress, which was first notified to them on 14 February 2021, was causing damage to the plaster and decoration of Flats 1 and 2 and provided photos to evidence the same. As a result of this, the Applicant sought the opinions of two building contractors who found some of the pointing of the building's mortar joints of the brickwork to be missing and/or in poor condition, allowing rainwater to penetrate the building. Gutters and down pipes also needed to be checked and cleaned at the same time.
9. To carry out the repointing, scaffolding would be required and as it was noted that the exterior of the windows were in need of minor repair and redecoration it was considered prudent to do these repairs at the same time to minimise costs.
10. The Applicant states that they advised the Respondent leaseholders of the initial quotes on the 17 March 2021 and the second tranche on the 29 March 2021 and invited comments. At the same time, the Respondents were advised that as the costs of the works was going to be over the consultation threshold of £250 an application for dispensation would be made in order that the works could be expedited and the affected Properties once again made habitable.

The quotes received were as follows:

#### Repointing and gutters

Taylor Clarke Property Maintenance

£1447.89

**Hugh Davis**

**£1250.00**

#### Repairs to windows

**Taylor Clarke Property Maintenance**

**£626.04**

Hugh Davis

£720.00

#### Scaffolding

**Cheltenham & Gloucester Scaffolding**

**£1656.00**

J & J Scaffolding Contractors

£2146.00\*

\* To compare on a like for like basis with the Cheltenham & Gloucester quote, a four week hire and licence was assumed.

11. The Applicant advised that they received various queries about the works, which were all answered with nothing further from the Respondents since 9 April 2021.

12. The Applicant advises that for all works they were going to instruct the contractor who had tendered the lowest price – which are shown in **bold** above.

### The Respondents

13. The Tribunal received submissions from:
- Sally Dawson (Flat 2) confirming support for the dispensation application.
  - John Roche (Flat 2) confirming, that provided that the costs do not materially differ from those quoted, the dispensation application was supported.
  - Harjit Johal (Flat 3) confirming support for the dispensation application.

### **The Law**

14. As intimated above (paragraph 2), section 20 of the Act, as amended, and the Regulations provide for the consultation procedures that landlords must normally follow in respect of ‘qualifying works’ (defined in section 20ZA(2) of the Act as ‘work to a building or any other premises’) where such ‘qualifying works’ result in a service charge contribution by an individual lessee in excess of £250.00.
15. Provision for dispensation in respect of some or all such consultation requirements is made in section 20ZA(1) of the Act which states:

*Where an application is made to a leasehold valuation tribunal (a jurisdiction transferred to the First-tier 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.*

16. In *Daejan*, the Supreme Court noted the following:
- i. Prejudice to the tenants from the landlord’s breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20 ZA (1).
  - ii. The financial consequences to the landlord of not granting the dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - iv. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some ‘relevant prejudice’

that they would or might have suffered is on the tenant. It is not appropriate to infer prejudice from a serious failure to consult.

- v. The court considered that 'relevant' prejudice should be given a narrow definition: it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
  - vi. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - vii. Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). The more serious and/or deliberate the landlords' failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
  - viii. In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
  - ix. The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
  - x. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord application under section 20ZA (1).
17. Further, in exercise of its power to grant a dispensation under section 20ZA of the Act, the Tribunal may impose such terms and conditions as it thinks fit, provided only that these terms and conditions must be appropriate in their nature and effect.
18. For the sake of completeness, it may be added that the Tribunal's dispensatory power under section 20ZA of the Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

## **Deliberations**

19. The Tribunal cannot see that the Respondents would suffer prejudice as a result of dispensation being granted. The works are urgently required and in terms of costs, the Applicant has obtained two quotations for each element of the same and has stated intend that they were going to instruct the contractor who had tendered the lowest price.
20. All three Respondent residential leaseholders support the application for dispensation.

## **Determination**

21. The Tribunal therefore grants dispensation from the consultation procedures for the works relating to the repointing of brickwork, the exterior decoration of window frames and the checking of gutters and downpipes as described in the Applicant's submissions.
22. Parties should note that this determination relates only to the dispensation sought in the application and does not prevent any later challenge by any of the lessees under sections 19 and 27A of the Act on the grounds that the costs of the works incurred had not been reasonably incurred or that the works had not been carried to a reasonable standard.

## **Appeal**

23. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

V Ward