FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UD/LDC/2020/0033**
Property	**:**	**1-112 The Waterfront Hertford SG14 1SE**
Applicant	**:**	**Mill Road (Hertford) Management Company Ltd. (Management Company)**
Representative	**:**	**Warwick Estates Management Ltd. (Managing Agent)**
Respondents	**:**	**Valerie Canale (Flat 90 Leaseholder)**
Representative	**:**	**Fabienne Canale**
Interested Party	**:**	**Sendtour Ltd. (Landlord)**
Type of Application	**:**	**S20ZA of the Landlord and Tenant Act 1985 - dispensation of consultation requirements**
Tribunal	**:**	**N. Martindale BSc MSc FRICS**
Hearing Centre	**:**	**Cambridge County Court, 197 East Road, Cambridge CB1 1BA**
Date of Decision	**:**	**8 July 2021**

DECISION

Decision

1. The Tribunal does not grant dispensation from any of the requirements on the applicant to consult the leaseholders under S.20ZA of the Landlord and Tenant Act 1985, in respect of the qualifying works referred to; being repairs to the roofs over part or all of Block E and Block H at the Property.

Background

2. The landlord applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation from all or any of the consultation requirements contained in S20 of the Act.

3. The application related to the commissioning of works to roofs over part or all of Block E and of Block H at the Property, to prevent water ingress to these two Blocks and to individual flats, within.

Directions

4. The Directions clearly state to both parties that *"These directions are formal orders and must be complied with…. If the applicant fails to comply with these directions the tribunal may strike out all of part of their case… If a respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or any of these proceedings."*

5. Prior to the Directions, the application form is from the management company, made through its agent Warwick Estates Property Management Ltd. No.06230550, a firm regulated by the Royal Institution of Chartered Surveyors. The agent names Mill Road (Hertford) Management Company Ltd. as both the applicant and respondent, with itself as agent for both.

6. Directions dated 21 January 2021 were issued by Deputy Regional Judge Wyatt of the Tribunal, without an oral hearing. The application form was received from the agent on 29 December 2020 but delayed, because the Tribunal fee was not received until 21 January 2021.

7. The Directions provided for the Tribunal to determine the application on or after 22 March 2021, unless a party applied on or before 26 February 2021 for a hearing. No request was received by the Tribunal by the date directed and on 1 March 2021, a paper determination was confirmed.

8. The applicant management company was, through its agent, to send to each of the leaseholders a copy of the application form, other evidence and the Directions by 10 February 2021 and to certify the date of compliance, to the Tribunal: It failed to do so.

9. Respondent leaseholders who objected to the application were to send a reply form and statement to the Tribunal and to the applicant by 26 February 2021. It appears that only one leaseholder at the Property responded, but not until later. In the absence of clear certification from the applicant, it is unclear which leaseholders at the Property had been notified, as directed at this, or at later stages.

10. The applicant was to prepare a bundle of documents including the application form, Directions, sample lease and all other documents on which they sought to rely; all responses from leaseholders; a certificate of its compliance in notification of leaseholders. It was to send 2 copies of this bundle to the Tribunal and 1 to each respondent leaseholder who opposed the application. The applicant management company was to complete this by 12 March 2021: It failed to do so.

11. The application form gave the address of the Property as *'1-112 The Waterfront'* and proceeds to describe it as *"Purpose built block of 112 apartments over 8 apartment buildings roof is a pitched kalzip style roof."* The form states that the application does, and yet also does not, concern qualifying works. It confirms that the works have either been started or completed.

12. The agent suggests that the application is especially urgent and should be directed to the 'fast track' based on: *"The roof over several apartments and two blocks has failed in sections due to poor waterproofing on the roof detailed and surface so emergency works had to be undertaken to prevent further damage."*

13. The application form gave the following description of the qualifying works: *"Stone Contracts installed Liquid GRP roofing product to roof slope junction with gulley with Carrier Layer to block E & H. Block E is 6 apartments and Block H is 9 apartments so Section 20 threshold is low. Scaffolding was erected on 23/11/20 and works undertaken during 7/12/20-18/12/20 – delayed because of poor weather. Client inspected and approved works on 17/12/20."* It is unclear to the Tribunal who the client referred to is, except for an unnamed officer of the management company.

14. The completed application form gave the reasons for seeking dispensation of all or any of the consultation requirements as: *"Emergency roof works were required over three apartments and two apartment blocks due to severe water ingress, there was not enough time to undertake the consultation without risking major damage to apartments and health issues to occupiers."*

15. On 22 March 2021 the Tribunal based on the bundle filed, contacted Long Term Reversions (Torquay Limited) No.03809388. It is unclear as to this company's role. It is assumed by the Tribunal that this is a transferee of the freehold, a sale of which completed, after the application was started, though this is not material to the decision. The Tribunal stated *"The Judge is considering striking out the application as the applicant has failed to comply with the directions dated 21 January 202…"* It invited representations against such an order by 29 March 2021.

16. On 15 April 2021 in response to the applicant, the Tribunal issued further Directions. On or before this date, it appears that the management company had represented to the Tribunal that it had served all respondents with a copy of the application and order 21 January 2021. However there is no mention of the date by which this was said to have been done by the agent, nor was a list of leaseholders served, provided to the Tribunal. More importantly had it done so, this information was not included in the bundle, contrary to the Directions.

17. On 17 May 2021 the Tribunal wrote, to Valerie Canale, leaseholder of a top floor flat (No.90) in Block E, one of the two affected blocks, via her representative Fabienne Canale. In response to the Tribunal's letter of 15 April 2021, she had requested a hearing. She maintained that she was unaware, before the Tribunal's April letter, of the application to the Tribunal. A telephone hearing was set for 7 June 2021.

18. Subsequently, very shortly before the due hearing date, owing to a late request from Ms Canale for an adjournment for personal family reasons, this date was revised to 8 July 2021. Ms Canale was directed to address the issue of consultation, and to *"elaborate on her statement and explain the prejudice that she thinks has been caused by the failure to consult"*.

19. A telephone hearing took place on 8 July 2021 starting at 10am. Mr Vardon of Warwick Estates represented the applicant. Ms Canale represented the respondent leaseholder.

Applicant's Case

20. The Property appears to be a modern, post 2000, purpose built and substantial but, low rise residential estate of flats. The Property (the entire estate) is known as 1-112 The Waterfront in Hertford town centre, near the River Lea. The estate consists of a small number of blocks, labelled A to H. Each has a differing number of flats, served by a single staircase. Each block appears to have its own roof.

21. In the standard lease responsibility for repairs to the exterior, including the roof of each block, falls to the management company, executed through their agent. Such outgoings are not estate costs but, are block

costs. These are recoverable block by block from each particular group of leaseholders of flats served by each roof. It was unclear therefore why the applicant sought to consult *all* leaseholders of the estate, at this stage.

22. At the start of November 2020 a price for the work was obtained, with the scaffolding going up at the end of November 2020 and the works themselves to the roofs to Blocks E (No.86-91) and Block H (No.104-112), starting early, and completing in late December 2020. Correspondence refers to 'estimates' from the final contractor - Stone, but, the bundle only contained six bills, for scaffolding and the works, in Block E and Block H.

23. In the sample letter filed in the bundle by the applicant, dated 26 March 2021 from the agent to leaseholders (of Flat No.1, Catalyst Housing Limited), it refers to requirements of the Tribunal for leaseholders. However flat No.1 is in Block A and no works were required or carried out to Block A. Mr Vardon confirmed at the hearing that Catalyst Housing Association had leases of all flats within Blocks A and B (No.1-34) and were a major leaseholder on the estate. The applicant stated that it was to provide them each with a copy of the *'Section 20 Dispensation Application Form'* and to provide; *"a statement explaining the nature of the relevant works, how these were procured, the estimated total costs and whether the applicant intends to seek to recover these costs from the leaseholders of the two blocks referred to or the leaseholders of the estate as a whole."*

24. The agent dealt with these self stated requirements, by referring *"..... to work completed in December 2020 for a number of roof leaks which were causing water ingress into the flats which we felt required urgent and necessary remedial action. The cost of the work which we believe is in the region of £48,000 is covered by the reserves account for the development and no supplementary charges will be issued for this."*

25. The letter provides a total figure for cost but, it does not explain the nature of the works, nor how they were procured. It does not confirm whether the management company will seek to bill leaseholders from the whole estate or simply from the two blocks. It contains no copy of any photographs of, nor any report into, the construction and condition of the defective roofs; nor the exact location of any defects; nor of any options for solutions; nor the specification of the works for the solution selected; nor quantities, or unit rates; nor of those who were asked to price the work. It is unclear if all or any of this information was requested by the agent or the management company of the contractor(s), let alone provided by the contractor, prior to the work being commissioned. It remains unclear what exactly the problem was and how in detail, it has been solved, for now.

26. At the hearing Mr Vardon was able to clarify the approximate total cost of the works and their respective division between Blocks E and Block H. He

also clarified that a claim had been made by the management company against the NHBC warranty, on what are still relatively new homes. At the hearing Mr Vardon confirmed that there had been a settlement between the management company and the NHBC for some of the works cost. This had the effect of reducing the net balance of works cost due at Block E to some £6,000. The cost due at Block H was around £16,000, where no claim had been made.

27. In the sample letter dated 26 March 2021, the applicant had apparently written to all leaseholders in the estate or at least some that were not affected. The agent also proceeds to re-assure the consultees that the cost is in any case, *"covered by the reserves account for this development"* (the estate, not block) and adds … "*no supplementary charges will be issued for this."* Mr Vardon also confirmed at the hearing that as both sums would be covered by the reserve fund for the estate but, attributed to each respective Block, no further sums would be billed to leaseholders

28. Lastly in the Directions for the contents of the hearing bundle and as noted again by the applicant in the sample letter dated 26 March 2021, they are to *"file with the tribunal a certificate to confirm that this has been done and stating the date(s) on which this was done."* The hearing bundle did not contain this certificate from the applicant.

29. At the hearing Mr Vardon confirmed that his point of contact at the management company was Mr Paul Leopold who is a leaseholder of a flat at the Property and a director of the management company. Authorisation to Warwick Estates, of the works and payment on completion was reported to be obtained from Mr Leopold for the management company. Mr Vardon confirmed that he had not experienced any difficulty in obtaining authorisation from the principal.

30. At the hearing Mr Vardon confirmed that another building company TMG, had carried out some more basic repairs to these roofs but, that the works had been ineffective and the applicant had not been billed. The engagement of this firm had been relatively quick but, had resulted in a delay of the works eventually carried out at the end of December 2020, some 4- 5 months after reports to the applicant, of leaks, in August 2020.

Respondent's Case

31. Although the respondents were also named as the applicant in the application form, they were later identified by the applicant to be all of the leaseholders at the Property. The Tribunal only received one objection, from a leaseholder, in a top floor flat No.90, Block E. In the respondent's view leaseholders had been kept in the dark from the start of the roof leaks. Initially there had been no correspondence and the recent letters from the managing agent about the works and their cost had only finally

been sent out to leaseholders as a result of the Tribunal's Directions following the application for dispensation. Moreover the correspondence contained a misplaced re-assurance to leaseholders: Firstly that the cost would be spread across the entire estate and not just a couple of blocks and secondly that there was somehow be no net cost to the leaseholders as funds would come from estate reserves.

32. The respondent disputed the claim of the applicant that there was insufficient time for them to consult on the problem and any proposed solution, back in August/ September, before this work was commissioned. The first recorded reports for leaks to these two roofs had been made to the applicant by residents and/ or leaseholders in mid August 2020. Had the works been commissioned and completed within a couple of months of these reports, the applicant's argument of an emergency and therefore urgency, might have been sustained but, the work was actually left undone until the close of December 2020.

33. Failure by the applicant to alert, report, consult and commission what the applicant described as emergency works for many months confirms that the applicant in effect, treated them as routine programmed repairs and so readily subject to the normal consultation. The applicant did not even try to complete part of the process and seek dispensation from the rest.

34. The respondent maintained that leaks from above to top floor flats, thought to have arisen by multiple failures of the roofs serving Block E and Block H, were first recorded as having been first reported to the management company, by leaseholders and or resident occupiers, in August 2020. Email correspondence was provided by them, in evidence to support this and there was lengthy and prolonged mainly email correspondence between the later respondent with the managing agent. It was either directly or through her flat letting agent, from August 2020.

35. The prejudice to the relevant leaseholders of the two blocks from a failure to comply with the full consultation process was further demonstrated in the management company's progression of its own application now. It did not reliably notify any leaseholders for that either. Then it notified all leaseholders apparently, even though most would not be required to pay under the lease either from their reserve fund for the Block or receive a further bill. The prejudice is made worse by the applicant's failure now to clarify from whom payment would be sought under the service charge even though this had been specifically directed by the Tribunal in its second set of Directions. The omission is then made worse by the applicant's agent referring to a nebulous 'reserves account' in its letter to leaseholders. The uncertainty for the relevant leaseholders under the lease is finally compounded by the statement from the agent, to all consultees that, *"no supplementary charges will be issued for this."*

The Law

36. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been followed or dispensed with.

37. Dispensation is dealt with by S.20 ZA of the Act which provides:-
"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."

38. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

(a) to each tenant; and
(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall –

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
(b) state the landlord's reasons for considering it necessary to carry out the proposed works;
(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure
(e) specify-
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and

(iii) the period on which the relevant period ends.

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Decision

39. The scheme of the provisions is designed to protect the interests of leaseholders. Whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.

40. The Tribunal must have a cogent reason for dispensing with the consultation requirements. The purpose of consultation is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

41. The application was described as urgent but, it then took the applicant nearly a month to pay the Tribunal's application fee. The applicant named itself as applicant and then bizarrely, in the same form, as respondent. The same agent was to be acting for both parties.

42. The application form marked the works both as qualifying and yet simultaneously as not qualifying. It appears that the managing agent was initially seeking the consent of their client, presumably the applicant management company, for the authority to carry out works for the roofs.

43. Mr Vardon identified the director at the management company from whom a decision for works would be received on the agent's request but, he could elaborate on the exact scheme of delegation between principal and agent. No copy of the estate management agency agreement was included in the bundle. If there had been disputes with the NHBC, or the developer, or the insurer, over questions of possible inherent defects in the roofs to two of the blocks in the Property, and therefore who was responsible to commission and or pay for the works; nothing was provided in the bundle, though Mr Vardon was able to clarify at the hearing.

44. There is reference in correspondence to an initial roofing contractor TMG being contacted by the agent and providing a price for the work to one or more blocks in late August 2020, for a start in early September 2020. There is no detail of the work which Mr Vardon confirmed had proceeded but, proved entirely ineffective.

45. Then in October 2020, there is reference to a possible claim for the cost of the works and potentially to organise same, under the NHBC guarantee. Mr Vardon was able to confirm the net sums due from the reserve fund or leaseholders at the settlement.

46. The applicant in its bundle and more importantly for the leaseholders shortly after the water leaks were reported; failed to provide any detailed supporting information regarding the alleged defects to the roofs. There were no photographs; no survey notes; no building reports; no specifications; no estimates. From this the Tribunal concludes on balance that a building survey was not commissioned and that none of this information was requested even from contractor, let alone provided by the contractor, still less to the leaseholders. Even in the short time apparently available it would have been reasonable for the management company to procure these through its agent.

47. The applicant undermines its own argument in the application, that the work was urgent for reasons of health and safety to the leaseholders, by consistently failing to treat it as urgent. From the evidence the Tribunal concludes that the applicant ended up running the repairs as a routine job without any attempt at prior notification or consultation. This proceeded, despite its being a substantial scheme of work that would easily exceed the regulatory cap on leaseholder contribution without consultation. The timescales which the applicant actually adopted demonstrated that it could have readily been subject to some if not all of the statutory consultation process. Not even a partial consultation was attempted by the applicant.

48. There was no evidence that the applicant had contacted the leaseholders at all, even before making the current application. There was no evidence in support of any consultation of the relevant contributory leaseholders at or

around the time first reports of water ingress were made. Rather there is evidence of confusion or lack of prompt effective action in the investigation of the defects, specification of the works, tender of the costs and from whom, if any, contributions would be sought. These widespread failings amount to a substantial prejudice to the relevant leaseholders interests. This respondent leaseholder is one of those leaseholders.

49. It appears to the Tribunal that the applicant had by default, elected not to comply with any of the consultation requirements. In short, no cogent reasons with supporting evidence were provided in the bundle to demonstrate to the Tribunal that this work could not have been dealt with via the usual statutory consultation process.

50. The fact that only one objection to the application had been received by the Tribunal is not alone sufficient reason to dispense with any aspect of the consultation process.

51. The Tribunal is concerned at the overall way this application was conducted by the management company, through its agent. It is unclear of the exact nature of the agency appointment, or the scheme of delegation between principal and agent. However Warwick Estates is regulated by the Royal Institution of Chartered Surveyors. It is therefore subject to the RICS Service Charge Residential Management Code 2016, a document adopted by Government, which sets minimum standards for the proper conduct of residential long leasehold block management and charges by landlords and their agents.

52. Besides the gross errors from the agent when completing and filing the initial application, following the failures of the consultation process for its client, it was dilatory and careless in complying with standard Tribunal Directions. Even when reminded of its obligations under notice of a possible strike out of the entire application, it did little better.

53. Application from dispensation of any of the statutory consultation process is refused. The maximum sum to be rechargeable to each contributory leaseholder of flats in Block E and Block H, for these particular works only, is therefore capped at £250.

54. **In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

N Martindale **8 July 2021**