



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

Case Reference : BIR/00CQ/LDC/2021/0022

Property : Blocks 1-16, 17-32, 33-48, 49-64, 65-80 Abbey Court,
Whitley, Coventry, CV3 4BA

Applicant : Marden Limited

Representative : Loveitts Limited

Respondents : The long leaseholders of the Property.

Type of Application : Application to dispense with the consultation requirements
for qualifying works pursuant to s.20 of the Landlord &
Tenant Act 1985 ('the Act') under s.20ZA of the Act.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Judge David R. Salter LL.B (Hons)

Date of Hearing : 26th January 2022

Date of Decision : 30 March 2022

DECISION

Introduction

- 1 The Applicant applied to the First-tier Tribunal (Property Chamber) on 30th September 2021 for an order to dispense with the consultation requirements in Section 20 of the Landlord & Tenant Act 1985. The section requires landlords to consult with tenants before placing a contract to undertake any 'qualifying works' that would cost each tenant more than £250 and there are Regulations setting out a timetable and procedure to be followed for consultation.
- 2 However, the Act envisages there may be occasions where for various reasons a landlord may be unable to consult, for example cases of emergency, and there is provision in section 20ZA for a landlord to apply to the Tribunal for 'dispensation' to over-ride the consultation requirements. An application can be made before or after works have been carried out.
- 3 In this case, the Applicant applied for dispensation on the ground that clearance work had been required urgently to comply with a Local Authority Notice to clear waste from land around blocks of garages at the site. The Respondents are the Lessees.
- 4 The Applicant obtained quotes for the work from three parties and instructed a firm of contractors, Ian Chester Enterprises Ltd., who subsequently carried out the clearance and other work.
- 5 The only issue for the Tribunal is whether or not it would be reasonable to dispense with the consultation requirements. Consenting to the application for dispensation does not preclude a subsequent application to the Tribunal by any of the Respondents to decide whether the amount paid for the work was unreasonable.
- 6 The Tribunal issued Directions on 8th October 2021 and further Directions on 30th November 2021 and heard the case by video platform on 26th January 2022.

Facts Found

- 7 The Tribunal inspected the property on January 25th 2022 with representatives of the Applicant and Respondent present.
- 8 The property comprises five blocks of low rise flats, 80 in total, on a site in a residential area of Coventry two miles to the east of the city centre. Each flat has a garage within separate blocks on the site, accessed from a private drive from the public highway.
- 9 The garages had been poorly maintained over the years and by the time of the Tribunal inspection, very few were useable. There were signs of widespread vandalism, some of the roofs and doors had been removed, internal walls were damaged and in some cases there was evidence of arson. It was clear they had not been used for their original purpose for a long time.

Relevant Law

- 10 The Applicant provided the Tribunal with the lease of Flat 1 and the other leases are assumed to be similar. It was granted for a term of 125 years from 25th March 1985 subject to ground rent and a service charge. The following provisions are relevant for present purposes.

- 11 The demise comprises the flat and garage. [Clause 1].
- 12 The repairing clause requires the tenant to keep the flat in good and substantial repair and condition. [Clause 3(1)]. The clause does not refer to the garage.
- 13 The tenant is required to contribute to a service charge covering the 'block', defined in this case as Block A on Plan 1 and clearly intended to cover the building in which the flat was situated defined by Schedule 4 Part 1(1), together with the cost of keeping the garden, grounds, accessways and driveways in good condition by Schedule 4 Part 1(3). The service charge includes other general estate management functions usually found in long leases with a sweeper clause in Schedule 4 Part 1(9) to reclaim costs incurred for any other expense in the interests of good management.
- 14 Although the garage is demised to the tenant, the landlord covenants to 'maintain repair and keep in good and substantial condition the garages on the Estate' [Clause 5]. So although the garage is demised to the tenant, the responsibility for its maintenance, repair and condition lies with the landlord.
- 15 By statute, the landlord would normally have to comply with consultation requirements in section 20 of the Landlord & Tenant Act 1985 before instructing contractors to undertake work that would cost a tenant more than £250 in a service charge year, but in this case, due to the urgency of having to comply with a local authority Notice, the landlord arranged for work to be carried out early in 2021 and applied to the Tribunal for dispensation of the consultation requirements under section 20ZA of the Act, several months later.
- 16 The Tribunal is able to grant dispensation if satisfied that it would be reasonable to do so [Section 20 ZA(1) of the Act] providing it would cause no real prejudice to the tenant [*Daejan Investments Ltd. v Benson & Others* 2013 UKSC 14].

Submissions

Applicant

- 17 The landlord submitted that work had to be undertaken to comply with a Notice issued to the landlord by Coventry City Council on 7th January 2021. The Notice was issued under The Prevention of Damage by Pests Act 1949 (section 4) in the following terms:
- 18 'TAKE NOTICE that under the provisions of the Prevention of Damage by Pests Act 1949, the Council of the City of Coventry ('the Council') being satisfied that steps should be taken for the destruction of rats or mice on the land known as:
Land Registry Plot WM350060 at Abbey Court, Abbey Road, Coventry, CV3 4BA
or otherwise to keep it free from rats or mice, DO HEREBY REQUIRE YOU within 21 days from the service of this notice, to carry out the following treatment and/or works:
- 19 **Remove and suitably dispose of the accumulation of refuse namely sofa cushions, mattresses, packaging items, scattered textiles and to include any other soft furnishings and putrescible waste from the land. Engage a pest control contractor, or treat the land for pests. The area must be left in substantially clean and clear condition, removing any significantly overgrown plant cover that may provide harbourage for vermin.'**
- 20 There then follow penalty clauses for non-compliance on summary conviction that could incur a fine not exceeding level 3 (£1,000.00).

- 21 The landlord's agent obtained quotes from three contractors and instructed Ian Chester Enterprises Ltd. to undertake work comprising clearance of roads and driveways, waste from garages and removal of garage roofs, walls and doors where appropriate.
- 22 The cost of clearing the garages of overgrowth vegetation and removing fly tipped rubbish between the garages was £3,500.00 plus VAT as set out in Ian Chester Enterprises Ltd.'s bill of 17th February 2021, a copy of which was included with the Applicant's submission.
- 23 The cost of clearing waste from inside the garages, removing some roofs, walls and doors was substantially higher and came to around £80,000. The work was itemised in individual bills for each garage depending on the amount of work claimed to have been carried out which were sent to the landlord's managing agents, Loveitts Limited. The individual bills were dated 1st August 2021.
- 24 Loveitts submitted both in written submission and oral evidence at the hearing, that the work was necessary and had to be undertaken to comply with the Notice.

Respondents

- 25 The Tribunal wrote to the tenants of the flats inviting responses. Of the 25 responses received, 14 were in favour of the landlord's application and 11 against. However, some of the objectors were landlords of multiple flats and in total were either occupiers or landlords of 23 flats in the scheme.
- 26 Most of the objections related to the cost of the work. Some claimed the cost had been excessive, others that the work listed on their bills was incorrect. Others claimed they would have cleared the waste from their garages had they been given the opportunity to do so.
- 27 One of the Respondents, Mr M. Hornbrook, said the garages had only been allowed to deteriorate to this condition as a result of the landlord's lack of repair over many years. Another, Mrs Z.McHale, questioned why some of the doors and roofs of the garages had been removed and why she was paying for work done to the garages.

Tribunal Decision

- 28 As explained at the hearing, the Tribunal is unable to comment in its consideration of this application on the cost of the work and indicated that if any parties consider it to have been excessive for the work carried out, or carried out to a poor standard they could apply to the Tribunal by making a separate application under section 19 of the Act, when the full cost, extent and standard of work could be considered depending on the evidence brought.
- 29 In this application, the Tribunal is being asked to make a single order for dispensation, but it appears to the Tribunal that the work has three elements:
- 1) clearance of the estate road and drives between the garages;
 - 2) clearance of waste from within the garages and
 - 3) structural work comprising removal of walls, roofs and doors from the garages.

This is borne out by the fact that item (1) was billed in February 2021 and the other works billed separately in August 2021 with each bill itemised. Therefore, the Tribunal considers it appropriate to deal with each item separately.

30 1) Clearance of the estate road and drives between the garages

31 The Applicant was able to undertake the work as a service charge item under clause 4(d) of the Lease in accordance with its covenant to 'keep tidy clean and (where appropriate) reasonably lighted the gardens and driveways of the Estate ...'

32 The tenants are required to contribute to the cost within the service charge provisions of Schedule 4, Part 1(3) that relate to the cost of keeping the paths and driveways in good condition.

33 From the photographs seen, written descriptions and oral evidence heard, the Tribunal is satisfied the work was necessary. The descriptions of overgrowth on site and general waste described in Coventry City Council's Notice are likely to have resulted in vermin infestation and the Tribunal is satisfied it was reasonably required to comply with the Notice without first consulting the tenants. Therefore, the Tribunal grants dispensation in respect of the items covered by Ian Chester Enterprises Ltd.'s invoice of 17th February 2021.

34 2) Clearance of waste from within the garages

35 Clearing the garages of loose waste is covered by the Notice and such activity may be regarded as necessarily incidental to the clearance of the estate road and drives between the garages, in fact, it would practically defeat the object of the Notice if the garages were not to be cleared of such waste.

36 In terms of the Applicant's responsibilities under the Lease, the landlord, as stated by the Tribunal (see paragraph 14 above), covenants in clause 5 of the Lease 'to maintain repair and keep in good and substantial condition' the garages on the property.

37 The Tribunal finds the cost of clearing the garages of loose waste to be within the terms of maintenance, repair and keeping in good condition in clause 5 and accordingly grants dispensation from the consultation requirements within section 20ZA for these costs.

38 3) Structural work comprising removal of walls, roofs and doors from the garages.

39 The Applicant submits that some of the garages were in poor repair and that to comply with the Notice it was required to remove some of the internal walls, roofs and doors from the garages.

40 The Tribunal agrees that the garages were and are in poor repair. However, the Notice is concerned with waste around the site likely to harbour rats and mice, it contains no requirement on the part of the Applicant to carry out structural work as seen in the narrative at paragraph 19 above.

41 Furthermore, there is no authority in the Lease allowing the landlord to remove sections of structural elements from the garages unless this could be construed within the context of the covenant in clause 5 as carrying out work necessary to keep them in repair and in good and substantial condition. However, removing structural elements and not replacing them would not in the Tribunal's opinion constitute compliance with these obligations. The work undertaken neither restores the garages to a good condition nor makes them fit for use.

42 Alternatively, it might be argued that reliance may be placed on Schedule 4, Part 1 (9).

- 43 However, the Tribunal does not consider that the residual provision of a sweeper clause can be applied where a specific obligation is imposed on the landlord elsewhere in the Lease and that obligation is not met.
- 44 As the Lease grants no authority for the landlord to remove structural elements without replacing them, and the Notice makes no reference to removal of structural items, the Tribunal does not consider it would be reasonable to dispense with the consultation requirements for this part of the work undertaken. The cost of these structural alterations is evident in line entries in each of the August 2021 bills.
- 45 Summary
In respect of the three elements:
- | | | |
|----|--|-----------------------|
| 1) | clearance of the estate road and drives between the garages; | Dispensation granted |
| 2) | clearance of waste from within the garages | Dispensation granted |
| 3) | structural work comprising removal of walls, roofs and doors from the garages. | Dispensation refused. |

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 30 March 2022

Application to the Upper Tribunal

If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.