



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

Case References : **BIR/41UF/LDC/2019/0017**

Property : **Albrighton House, Water Gardens,
Wolverhampton, WV4 5LJ**

Applicant : **Danesdale Land Limited**

**Applicant's
Representative** : **Remus Management Limited**

Respondents : **The long leaseholders of Flats 1 – 9
Albrighton House**

Type of Application : **Application for the dispensation of the
consultation requirements provided by
section 20 of the Landlord and Tenant
Act 1985**

Tribunal Members : **Judge M K Gandham
Mr N Wint FRICS**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **18 February 2020**

DECISION

Decision

1. The Tribunal determines that it is reasonable to dispense with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in relation to repairing works required to the roof of Flat 7, Albrighton House, The Water Gardens, Wolverhampton, Wv4 5LJ, as referred to in the Applicant's application dated 10th December 2019.

Reasons for Decision

Introduction

2. On 12th December 2019, the Tribunal received an application from Danesdale Land Limited ('the Applicant'), under Section 20ZA of the Landlord and Tenant Act 1985 ('the Act'), for dispensation from the consultation requirements contained in Section 20 of the Act in respect of the property known as Albrighton House, The Water Gardens, Wolverhampton, Wv4 5LJ ('the Property'). The application related to a leak in the roof above Flat 7. It stated that the costs of the works fell above the consultation threshold and that, until the works had been completed, the Property would remain vulnerable to further ingress of rainwater.
3. The Applicant is the current freeholder of the Property and Remus Management Limited ('Remus') are the managing agents for The Water Gardens, the development in which the Property is located. The Respondents to the application are the long leaseholders of the flats comprised in the Property, whose names are detailed in the Annex hereto.
4. A Directions Order was issued on 13th December 2019, requiring the Applicant to forward to each of the Respondents a statement detailing the purpose of the application and copies of any specialist reports or quotes received for the proposed works.
5. The Tribunal received a letter from Remus, on 9th January 2020, enclosing a copy of two letters that had previously been sent to the Respondents. The Tribunal received a single letter from one of the Respondents, Mrs J Parry (the leaseholder of Flat 6) regarding the application. Neither of the parties requested an oral hearing.
6. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements, under section 20ZA of the Act. **This Application does not concern the issue of whether any service charge costs are reasonable or payable and the Respondents will continue to enjoy the protection of section 27A of the Act.**

The Law

7. Section 18 of the Act defines what is meant by the term ‘service charge’ and defines the expression for ‘relevant costs’. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred.

Section 20 details consultation requirements and section 20(1) provides:

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or*
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works, unless certain consultation requirements have been either complied with or dispensed with by First-tier Tribunal (Property Chamber). With respect to qualifying works, currently, the consultation provisions apply where the costs result in the relevant contribution of any tenant being more than £250.00.

The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These, amongst other things, require the landlord to serve on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants’ observations. There is also a duty on the landlord to seek estimates from any contractor nominated by or on behalf of tenants. The requirements also detail the procedure for the preparation and delivery of the landlord’s proposals.

Section 20ZA of the Act provides:

- (1) Where an application is made to the appropriate 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.*
- (2) In section 20 and this section—*

“qualifying works” means works on a building or any other premises...

Therefore, section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements “*if satisfied that it is reasonable*” to do so.

The Leases

8. The lessees are responsible, under the leases, to keep the individual apartments in good repair and condition. Part 1 of the First Schedule to the leases define the individual apartments as including the windows and window-frames fitted in the external walls but confirm that they do not include the parts of the building lying above the surfaces of the ceilings or the main joists or structural parts of the building. As such, although the lessees are responsible for maintaining the windows and frames, they are not responsible for the roof or skylights.
9. Clause 1 of the Seventh Schedule to the leases confirms that the landlord is responsible:

“Subject to the payment by the Tenant of the Tenant’s contribution to the total Service Charge and to the Reserve Fund... to keep in good repair and decoration (as appropriate) and to renew and improve as and when the Landlord may from time to time in its absolute discretion consider necessary:-

1.1 the main structure of the Building INCLUDING:-

(a) the roof and foundations

...

(c) the structure of the ceilings and ceiling joists...”

The Applicant is, therefore, responsible to carry out the identified works, the costs of which can be recovered from the Respondents through the service charge.

The Inspection

10. The Tribunal inspected the Property on 7th January 2020. Mr Wilson, a Property Manager employed by Remus, attended on behalf of the Applicant. None of the Respondents attended.
11. The Property comprises a three-storey purpose built building, built circa. 2007 in brick and tile, located in a gated private estate known as The Water Gardens. The building comprises nine apartments with garages. Flats 1 and 2 are located on the ground floor, Flats 3, 4 and 5 on the first floor, with Flat 6 on a mezzanine level to the first floor, and Flats 7 and 8 on the second floor, with Flat 9 located on a mezzanine level to the second floor.
12. The works required were to the rear skylight and roof located above Flat 7. The Tribunal was only able to carry out a limited external visual inspection of the area and was not able to gain access to the flat to carry out an internal inspection of the area affected.

Submissions

13. Remus provided copies of letters, dated 4th December 2019 and 11th December 2019 respectively, which they stated were sent to each of the Respondents. The first letter confirmed the fact that there had been a leak in one of the apartments, caused by a deterioration of the roof and flashing around the skylight. In the letter they stated that, due to the severity of the works, they had not commenced a section 20 consultation programme and were instead applying to the Tribunal for dispensation of the consultation requirements.
14. The second letter apologised for failing to include the details of the proposed works in the previous letter, confirmed that the leak was to Flat 7 and that the works proposed were:
 - Providing suitable high access equipment;
 - Removing tiles around the skylight;
 - Treating timbers with Xylophene wood preservative as necessary;
 - Repairing the felts and battens as required;
 - Repairing/replacing the flashing as required;
 - Replacing tiles;
 - Re-bedding/re-pointing as required; and
 - Cleaning up and removing all job-related debris

The costs of the proposed works was stated as £1,535.00 excluding VAT.

15. The Applicant had confirmed, in the application, that the flats paid different contributions towards the external maintenance, Flat 8 paying 15.2484%.
16. Mr Wilson confirmed that he had obtained two quotes for the proposed works and that the Applicant had chosen the lower quote. The quotes were forwarded to the Tribunal after the inspection. A quote from Practical Roofing, dated 1st November 2019, detailed a figure of £1,535.00 excluding VAT for the proposed works and a quote from Vasight, dated 11th November 2019, detailed a figure of £1,727.50 excluding VAT.
17. Mrs Parry, the leaseholder of Flat 6, was the only respondent to provide a statement, by way of a letter received by the Tribunal on 14th January 2020. She referred to the fact that Remus' first letter had worried many of the Respondents, as it failed to detail what works were required or the cost of the same. She stated that Remus only sent the second letter after some of the Respondents had challenged Mr Wilson regarding the costs. She stated that this second letter failed to mention that two quotes had been obtained or detail the name of the roofer from whom the quote had been obtained.
18. Mrs Parry further stated that many of the leaseholders were known to each other and that she believed that all of the Respondents would have agreed to pay for the works without the involvement of the Tribunal. She stated

that she personally felt that Mr Wilson was “*using a sledgehammer to crack a nut and costing us all a lot more money than necessary*”.

The Tribunal’s Deliberations

19. The Tribunal notes that, although the costs of the proposed works in this matter are relatively small – a sum of £1,535.00 plus VAT, as the Applicant states that Flat 8 is liable to pay a 15.2484% contribution, this would mean that the leaseholder of that flat is liable for a contribution of approximately £280.00. As the potential cost to one of the Respondents amounts to a sum over £250.00, the section 20 consultation requirements do apply to the works.
20. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the section 20 consultation requirements, as are required under the Act.
21. Section 20ZA confirms that a tribunal may make a determination to dispense with all or any of the consultation requirements, if it is satisfied that it is “reasonable” to dispense with the same. The leading authority for the way in which the tribunal should approach this question was considered in the decision of the Supreme Court in *Daejan Investment Limited v Benson et al* [2013] UKSC 14, which determined (amongst other things) that the correct approach was to consider the extent to which the tenants might be prejudiced by a lack of consultation. In considering that issue, the legal burden of proof rests with the Applicant, but the factual burden of identifying some relevant prejudice rests with the Respondents. Relevant prejudice refers to a disadvantage that the Respondents would not have suffered had the consultation requirements been fully complied with.
22. It follows that the principal focus for the Tribunal’s consideration is the extent, if any, to which the Respondents are likely to be prejudiced by the failure of the Applicant to comply with the consultation requirements in this regard.
23. The Applicant has stated that they chose the lowest quote and made the application for dispensation as the works are urgently required.
24. The only submission received from the Respondents, as detailed above, related to the lack of information provided by the Applicant and that the action of making an application to the Tribunal might have increased the cost to the Respondents. The Tribunal does not agree. As stated above, the cost of the proposed works to at least one of the Respondents means that the consultation provisions apply and it is clear that the works are required as soon as possible. The Tribunal considers that complying with the consultation provisions would, not only lengthen the process, but that the overall costs of complying with the procedure is likely to be greater to the Respondents than the application for dispensation.

25. Accordingly, the Tribunal concludes that it is reasonable for dispensation to be granted under section 20ZA of the Act.

Appeal

26. 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 (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
.....
Judge M. K. Gandham

Annex

Mr A Salter of Flat 1, Albrighton House

Mr A & Mrs R Machin of Flat 2, Albrighton House

Mrs D Ward of Flat 3, Albrighton House

Mr N & Mrs A Bartlam of Flat 4, Albrighton House

Mr J & Mrs P Palmer of Flat 5, Albrighton House

Mr K & Mrs J Parry of Flat 6, Albrighton House

Ms J Whyte of Flat 7, Albrighton House

Mr E Francis of Flat 8, Albrighton House

Mr A Rasul of Flat 9, Albrighton House