

10356



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

Case Reference : **CHI/OOML/LDC/2014/0041**

Property : **32 Norfolk Road, Brighton, East Sussex
BN1 3AB**

Applicant : **Nevill Blandford Associates Ltd.**

Representative : **Sawyer & Co.**

Respondents : **The Long Leaseholders at the property**

Type of Application : **Section 20ZA of the Landlord and Tenant
Act 1985 (as amended)**

Tribunal Members : **R. A. Wilkey FRICS (Surveyor/Chairman)
N. Robinson FRICS (Surveyor Member)**

**Date and venue of
Hearing** : **Tuesday 28th October 2014
Paper determination**

Date of Decision : **Tuesday 28th October 2014**

DECISION

DECISION IN SUMMARY

1. The Tribunal determines to dispense with the consultation requirements contained in Sch.4 Part 2 paragraphs 8-13 of the Service Charges (Consultation Requirements) (England) Regulations 2003 and the Section 20 procedure in relation to the qualifying works to the defective rendering to the chimney stack at the rear of the property.

INTRODUCTION

2. This is an application by the Freeholders of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
4. S.20 of the Act, and regulations made thereunder, provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a First Tier Tribunal. In the absence of any required consultation, the limit on recovery is £250 per lessee in respect of qualifying works.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section and in S. 20ZA.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying works have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include

amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.

8. S.20ZA provides that a First Tier Tribunal may dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).
9. As regards qualifying works, the recent High Court decision of *Phillips v Francis*[2012] EWHC 3650 (Ch) has interpreted the financial limit as applying to all qualifying works carried out in each service charge consultation period. However, this decision is subject to an appeal which has yet to be heard.
10. A lessor may ask a Tribunal for a determination to dispense with all or any of the consultation requirements and the Tribunal may make the determination if it is satisfied that it is reasonable to dispense with the requirements (section 20ZA) The Supreme Court has recently given guidance on how the Tribunal should approach the exercise of this discretion: *Daejan Investments Ltd. v Benson et al* [2013] UKSC 14. The Tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the Lessor to rebut it.

EXTENT OF PROPOSED WORK

11. The works involve repairs to rendering of the chimney stack at the rear of the property. In July 2014, the owner of the adjoining building advised the

Managing Agents that rendering had fallen from the rear of 32 Norfolk Road and landed near to a conservatory.

DESCRIPTION AND INSPECTION

12. The building comprises a substantial terrace house which was originally constructed over 100 years ago and subsequently converted into five self-contained flats. The main roof is not visible from ground level but there is a dormer in the front pitch which has cheeks clad with synthetic slates and uPVC windows and fascias. The elevations to the main building are cement rendered and painted. External paintwork is in poor order with flaking paint to several surfaces. Plants are growing at the level of the upper front parapet.
13. The Tribunal inspected the property and were met by Mr. Head and Ms. Chalk from Sawyer & Co., managing agents.
14. Ms. Casseram, lessee of Flat 2 on the first floor, invited the Tribunal to inspect damp and stained wall surfaces in the rear bedroom. Mr. Head confirmed that this was not related to the present application and that the external works necessary to remedy this defect will be dealt with separately.
15. The Tribunal obtained access to inspect the rear of the building by courtesy of the occupier of Flat 1 which is on the ground floor. Mr. Head indicated the location of the chimney stack which is the subject of this Application but no meaningful examination was possible from ground level.
16. During the course of the inspection, Mr. Head confirmed that the Application relates solely to repairs to the rear chimney stack and that, although additional repairs are required to rendering of the rear walls, these will be dealt with separately.

THE LEASES

17. The Tribunal has been provided with a copy of the lease of First Floor Flat 32 Norfolk Road and it is assumed that leases of other flats in the building are the same in every material respect

18. By virtue of Clause 5 2), the landlord must, amongst other things, when and as necessary maintain repair cleanse repaint redecorate and renew:
 - (a) The roofs pipes conduits and all drains and other devices for conveying rainwater from the Freehold Property
 - (b) The main structure of the Freehold Property including in particular (but not by way of limitation) the foundations and exterior walls thereof
19. By virtue of Clause 4(1) the tenant covenants to contribute and pay to the landlord the Tenant's share of the Annual Maintenance Cost
20. Clause 4(5) of the lease states that the Annual Maintenance Cost shall be the total of all sums actually spent by the Landlord during the period to which the Annual Maintenance Account relates in connection with the management and maintenance of the Freehold Property and shall include the costs of and incidental to the performance and observance of each and every covenant on the Landlord's part contained in sub-clauses (2) (3) (4) (5) and (6) of clause 5 of this lease
21. The Tribunal has not interpreted the leases to determine whether or in what proportion a service charge may be levied on the tenant.

CONSIDERATION

22. Item 3 of the Directions issued by the Tribunal on 9th September 2014 stated that the Application is to be determined on the papers without a Hearing in accordance with rule 13 of the Tribunal Procedure Rules 2013 unless a party objects in writing within 28 days of the date of receipt of these Directions. No such objection had been received and thus the Tribunal retired to make its decision on the basis of a paper determination

PRELIMINARY MATTERS

23. The Tribunal had received the following documents prior to the Hearing:
 - Letters dated 18th and 21st September 2014 from Sawyer & Co (Managing Agents) to the Lessees of Flats 2 and 3, 32 Norfolk Road. This

correspondence was in response to letters from the lessees objecting to the Application for Dispensation.

- Photograph showing defective rendering to the rear chimney stack.
- Copy of an email dated 1st August from David Aspey, surveyor instructed by the Managing Agents to inspect and report on the defects.
- Letter dated 18th September 2014 from Deacon Building Services. This provided an indication of the likely cost of repair works and included a warning that “further repairs will most probably be needed”
- A quotation from Sussex Roof Access in respect of work required to repair 4m² of rendering to the rear elevation
- Letter from Supreme Feature Ltd. dated 19th September 2014 giving an indication of the possible cost of carrying out work to rendering at the rear of the property. This firm has not inspected the property.
- Letter dated 26th September 2014 from the Lessee of Flat 2 which outlined the reasons for objecting to the present Application for Dispensation.
- Email dated 19th September 2014 from the Lessee of Flat 3 which outlined the reasons for objecting to the present Application for Dispensation.

24. The Tribunal confirms that the Application under consideration is solely to dispense with the consultation requirements that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under S.27A of the Act to deal with the liability to pay the resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.

THE APPLICANT’S VIEWPOINT

25. The Application refers to “Health and Safety Risk to neighbours property” and states “Render has already started to fall off the back of the property and landed in the neighbour’s garden. Where there is a conservatory and garden is used. 2 surveyors have viewed the building and reported that the work needs to be carried out urgently”
26. Each of the letters to the Lessees contains substantially the same wording and outlines the circumstances and reasons for the Application. Reports

had been obtained from a surveyor and it was considered that the work was urgent as a health and safety issue and not just because it would be more convenient to extend the scaffolding that was already in place in connection with work nearing completion to the adjoining property.

THE LEASEHOLDERS' VIEWPOINT

27. Two of the Lessees have written to explain the reasons why they oppose the Application for Dispensation. No communication has been received from the Lessee of the other flats
28. The letter from the Lessee of Flat 2 refers to several matters which are not relevant to the decision that needs to be made by the Tribunal today. However, the letter states "In any case, essential work has been required to the front of the building for which the Section 20 procedure has been followed. If the same process is required for the back of the property, then the Section 20 stages should be followed to allow for an inspection of the reports which have been carried out to establish the extent of the work and also so that nominations can be made as to who should carry out the work"
29. The Lessee of Flat 3 is of the view that the two emails from surveyors "do not offer comprehensive evidence that the failed render is an immediate risk to persons or property below". The implication of the emails is that "urgency to repair the works was associated with making use of the scaffold already erected to the rear of the neighbouring property as opposed to the actual risk of incident itself"

THE DECISION

30. The decision is made on the basis of a paper determination and the Tribunal has carefully considered the documents supplied.
31. As indicated earlier, the primary consideration for the Tribunal is whether or not the Lessees will suffer prejudice if dispensation is granted.
32. The precise extent of work to be carried out was not clear from the supplied papers. However, Mr. Head informed the Tribunal during the inspection that the Application relates solely to repairs to defective rendering of the

upper part of the rear chimney stack. Works to repair rendering to the adjacent walls of the building would be the subject of a separate consultation.

33. Work will begin shortly to overhaul and redecorate the front of the building. The S.20 consultation process has already been completed in respect of this work and commencement is imminent. The intention is to use the scaffolding that will be erected at the front of the property to gain access to the rear chimney stack so that the necessary repairs may be carried out at minimal cost and inconvenience to the occupiers.
34. Two of the Lessees have objected to the Application but, the freeholder's proposal has merit and, in the view of the Tribunal, there will be no prejudice to the leaseholders. It is important that the repairs are carried out as soon as possible as there are health and safety issues relating to rendering falling onto the adjoining property. The leaseholders will have the opportunity to make their observations on the other work at rear when the consultation process gets under way.
35. The Managing Agent first became aware of the problem in July this year but the Consultation process has not even started. The only communication with the Lessees of which the Tribunal is aware is the letters referred to above. The Tribunal considers that the Managing Agents have had ample time to start the S.20 consultation process and should not have relied on the possibility that dispensation would be granted under the present application.
36. "Quotations" supplied are of limited value. In particular:
 - (a) The letter from Deacon Building Services includes a warning and states "To erect access scaffolding to the front and rear of the property, allowing for beam work over the neighbour's roof, you would be looking at approximately £4,000 plus VAT" and "To carry out render repairs, as a bare minimum, I think you would need to allow approximately £1,000 plus VAT"
 - (b) The quotation from Sussex Roofing Access relates solely to repairs to rendering of the chimney stack with the additional comments "The

rigging on the roof will have to be checked before starting work” and
“Someone will need to confirm the exact areas before starting work”

(c) Supreme Feature Ltd. have not inspected the property

37. Nevertheless, the nature and basis of the proposed works has been established and, as indicated earlier, the grant of dispensation simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them. The landlord or any of the tenants can make a subsequent application under S.27A of the Act to deal with the liability to pay the resultant service charges
38. The Tribunal has carefully considered all the evidence available to it and has concluded that there is no evidence that the Respondents may be prejudiced by the lack of consultation.
39. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable in all the circumstances for it to grant dispensation from the requirements of Section 20(1) of the Act in respect of the proposed works.
40. For the avoidance of doubt, the dispensation relates only to repairs to the rear chimney stack with access via the main roof.

Dated: Tuesday 28th October 2014

Roger A. Wilkey FRICS (Surveyor/Chairman)

Appeals

41. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
42. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
43. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
44. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
45. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.