



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

**Case Reference** : **CHI/21UF/LDC/2014/0007**

**Property** : **4a High Street, Seaford, East Sussex  
BN25 1PG**

**Applicant** : **J. B. Howard Properties  
Limited (Landlord)**

**Representative** : **Caveh Sobhanpanah**

**Respondent** : **Gillian Westwood (Leaseholder of  
maisonette)**

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

**Tribunal Members** : **Mr. R. A. Wilkey (Surveyor/Chairman)  
Ms. J. Morris (Lay member)**

**Date and venue of  
Hearing** : **Wednesday 5<sup>th</sup> March 2014  
No Hearing - paper determination**

**Date of Decision** : **Wednesday 5<sup>th</sup> March 2014**

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**DECISION**

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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 which relate to a defective covering to the flat roof at the rear of the building.

## **INTRODUCTION**

2. This is an application by the freeholders of the building, 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.
3. For the avoidance of doubt, this Application and decision relate to the maisonette only. The Tribunal does not have jurisdiction to deal with the commercial part of the building.

## **THE LAW**

4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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)).
10. 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.

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.

## DIRECTIONS

11. Following a pre-trial review on 17<sup>th</sup> February 2014, Directions were issued for the conduct of the matter. Amongst other things, the Directions provided that:
- (a) The leaseholder should complete a form by 25<sup>th</sup> February stating whether or not she agrees to the application and whether the Tribunal shall hold a formal Hearing
- (b) Unless the leaseholder consents to the Application, she shall by 25<sup>th</sup> February 2014 send to the Applicant:
- A statement setting out why she opposes the application
  - Representations as to whether it may be appropriate for the Tribunal to grant dispensation “on terms”. Such terms could include, but are not limited to:
    1. An offer of reduction of service charge costs
    2. Payment of the leaseholder’s reasonable legal/professional costs incurred in these proceedings
  - Evidence of what she may do/have done differently if the landlord were or had to comply with the full statutory consultation process
  - Copies of all documents to be relied upon **not** already included in the Applicant’s bundle
- (c) The Applicant shall be responsible for preparing the bundle of relevant documents (in a file, with index and page numbers) and shall by 10.00am on 3 March 2014 send one copy to the other party and send two copies to the Tribunal.
- (d) The bundle shall contain copies of:
- The application with documents enclosed
  - These directions and any subsequent directions
  - The leaseholder’s statement of case

- Any representations on terms from either party
- The date and circumstances on which it first became apparent that the works became necessary
- A copy of any consultation documents so far provided (e.g. a notice of intent)
- Details of any quotations received, with specifications if available
- Any other relevant documents (including reports) upon which the Applicant wishes to rely
- Any notices served by the local authority or any other statutory body

#### **SUMMARY OF PROPOSED WORK**

12. The work involves renewal of the asphalt covering to the flat roof over the single storey rear addition, together with replacement of the timber decking on the surface and redecoration of the ceiling in the room in the shop which is beneath the flat roof.

#### **DESCRIPTION AND INSPECTION**

13. The property comprises a corner building on three floors plus dormer windows providing accommodation in the roof space. It is arranged as a Pizza take-away on the ground floor and a self-contained maisonette on the floors above.
14. The room beneath the flat roof at rear is used by and accessed from the shop only. The leaseholder of the maisonette above has laid timber decking on the surface of the flat roof which is used as a “roof garden”
15. The Tribunal inspected the property and were met by Mr. Caveh Sobhanpanah (Managing Agent) and Mr. Gary Edwards (landlord’s surveyor) Mr. Saeed Boostani (tenant of the shop) kindly allowed access to the ground floor part of the premises. Gillian Westwood (leaseholder of the maisonette) was not present during the inspection and was not represented.
16. It is apparent that water is penetrating through the ceiling in the ground floor premises, beneath the flat roof. Several buckets have been

placed to collect the water. The situation is such that the shop is unable to trade until the repairs have been carried out.

17. Access to inspect the flat roof above is obtained by way of a simple staircase approached from a separate entrance at street level.
18. Scaffolding is currently resting on the surface of this roof. It was erected to carry out repairs to the chimney stack. This work has now been completed and the scaffolding will shortly be removed.
19. The surface of the flat roof is covered with timber decking and inspection of the asphalt beneath is very restricted. Mr. Edwards advised that, although various attempts had been made to carry out patch repairs, partial exposure had revealed that the asphalt covering has reached the end of its useful life and needs to be completely replaced, together with the timber decking.

#### **THE LEASE**

20. The lease of the maisonette is for a term of 99 years from 18<sup>th</sup> April 1986.
21. Clause 4(2) requires the landlord to “maintain repair renew...clean and decorate as required...for the purpose of keeping in good and substantial repair (a) the structure and exterior of the building and in particular the roofs foundations walls and principal internal timbers thereof..”
22. By virtue of clause 9, the leaseholder is required to pay to the freeholder 75% of the “scheduled expenses”
23. The “scheduled expenses” are defined in the schedule as “the cost of the maintenance repair renewal...cleaning and decoration...required for the purpose of keeping in good and substantial repair (a) the structure and exterior of the building and in particular the roofs foundations walls and principal internal timbers thereof..”
24. The Tribunal has not interpreted the leases to determine whether or in what proportion a service charge may be levied on the tenant.

25. There were no matters raised by either of the parties in respect of the interpretation of the lease.

#### **DOCUMENTS SUPPLIED TO THE TRIBUNAL**

26. The Tribunal has received copies of the following documents:
- (a) The completed Application form and the lease of the shop and the maisonette
  - (b) An email dated 10<sup>th</sup> February 2014 from Gary Edwards, who, we are informed, is the landlord's surveyor. This report states that the asphalt covering and decking would need to be replaced to prevent further water penetration into the shop.
  - (c) An undated document, with a handwritten note at the top stating "Crest Building and Maintenance", which provides a quotation of £5,783 for the necessary building work
  - (d) A quotation from M A Refurbishments Ltd. for substantially the same work in the sum of £6,425
  - (e) A letter from Kingslet (on behalf of the freeholder) to Ms. Westwood (leaseholder) advising of the intention to carry out work to the flat roof area. Attached to this letter is a copy of the specification prepared by the landlord's surveyor and a "NOTICE OF INTENTION TO CARRY OUT WORK issued in accordance with Section 151 of the Commonhold and Leasehold Reform Act 2002"
  - (f) A form signed by Gillian Westwood which confirms that she supports the landlord's application for dispensation from full consultation and agrees that the Tribunal may decide the matter on the basis of written representations only.
27. No written communication had been received from the Respondents (other than the completed form indicating agreement with the application for dispensation).

28. The Application today 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.

### **CONSIDERATION AND DECISION**

29. The parties had not requested a Hearing. The Tribunal noted in particular that the Lessee had signed a form dated 24 February 2014 which agreed that the Tribunal may decide the matter on the basis of written representations only
30. It is clear that these are qualifying works which need to be done urgently.
31. The leaseholder has been kept informed of the landlord's proposals and the likely cost. In addition, she has indicated her support for the works by completing the form referred to above
32. No objection has been made to the proposals and the Tribunal does not consider that she would be prejudiced if dispensation were granted
33. 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 works required to the area of the flat roof at the rear of the building

Dated: Wednesday 5<sup>th</sup> March 2014

Roger A. Wilkey (Surveyor/Chairman)



## **Appeals**

38. 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.
39. 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.
40. 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.
41. 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.
42. 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.