

10410



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

**Case Reference** : **BIR/00CN/LDC/2014/0006**

**Property** : **1-16 The Lodge, Norfolk Court, Rotton Park Road,  
Birmingham B16 9JJ**

**Applicant** : **Elmbirch Properties Plc**

**Represented by** : **Remus Management Limited (Mrs Chiswell-  
Williams and Ms T Crosdale)**

**Respondents** : **Mr Q Zaman**

**Date of Application** : **13<sup>th</sup> June 2014**

**Type of Application** : **Application to dispense with consultation  
requirements in respect of qualifying works -  
Section 20ZA Landlord and Tenant Act 1985 (the  
Act)**

**Tribunal** : **R. T. Brown FRICS  
P. J. Hawksworth**

**Date and venue of** : **4<sup>th</sup> September 2014**

**Hearing** : **First-tier Tribunal, Priory Court, Bull Street,  
Birmingham.**

**Dated** : **9<sup>th</sup> October 2014**

---

**DECISION**

---

## DECISION

1. The Tribunal determines that it is reasonable to dispense with the statutory consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in relation to payment of an invoice for tree removal at the property

## REASONS

### Background

2. On the 17<sup>th</sup> June 2014, the Tribunal received the Application under Section 20ZA of the Act for dispensation from all or any of the consultation requirements contained in Section 20 in relation to the removal of a beech tree which had fallen in severe weather on 5<sup>th</sup> December 2013 at The Lodge Norfolk Court and an adjoining car park belonging to neighbouring property.
3. Notice of the Application, together with information from the Tribunal, was given to the Leaseholders of the 4 flats at The Lodge Norfolk Court.
4. A Directions Order was issued by a Procedural Chairman on the 27<sup>th</sup> June 2014 including a direction that any Leaseholders who wished to make representations should do so by 8<sup>th</sup> August 2014.
5. The Application requested the matter be considered on the papers submitted. However, the Procedural Chairman directed that an oral hearing be arranged if any of the Respondents opposed the application. Three of the Leaseholders raised objection and accordingly, a Notice of Inspection and Hearing was issued to the parties.
6. Written representations were received by email and letter from Mr Q Zaman (Flat 1), Mr J Gebelin (Flat 3) and Mr P Rice (Flat 4).
7. No application for an order under Section 20C preventing the Applicant from recovering its costs of these proceedings by way of the service charge provisions, in so far as the Lease permits such recovery, was made.

### The Law

8. Section 20 of the Act limits the amount which tenants can be charged for qualifying works unless the consultation requirements have been either complied with, or dispensed with by First-tier Tribunal (Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003** ("the Consultation Regulations"). These require the Landlord to serve on the tenants a Notice of Intention, provide a facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and, the amount of the estimated expenditure, then have to be given in writing to each tenant and to any recognised tenant's association. There is also a duty to have regard to observations in relation to the proposal; to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.

9. Section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable to do so.

### **The Leases**

10. The determination of this Tribunal relates to the statutory requirements under the Act. It does not extend to overriding any contractual obligations the parties may have under the respective leases.

### **The Inspection**

11. The members of the Tribunal inspected the development in the presence of Mr Zaman, Mrs Chiswell-Williams (Regional Manager) and Ms T Crosdale (Property Manager) both of Remus Management Ltd.
12. The property comprises a development of 4 flats constructed within a converted coach house.
13. The members of the Tribunal were shown the site of the fallen beech tree and the adjoining car park onto which the tree had fallen on 5th December 2013. The Tribunal noted the bowl had been 'ground out' but the fungus had remained.

### **The Hearing**

14. The hearing was held after the inspection.
15. The Applicant was represented by Mrs Chiswell-Williams and Ms Crosdale.
16. Mr Zaman represented himself. No other tenants were in attendance.

### **Applicant's Submissions**

#### *Dispensation*

17. Mrs Chiswell-Williams explained that Ms Crosdale had had the tree in question inspected by tree surgeons on or about the 29<sup>th</sup> October 2013 and was verbally informed that 'immediate action was not required'. In any event the cost of removing it would be £1,600.00 plus VAT (£1,920.00) which exceeded section 20 limits (under the 1985 Act). A written estimate was requested from the tree surgeons concerned but was not forthcoming and a further written quote was therefore obtained from Messrs T Mouseley and Sons in the sum of £3,100.00 plus VAT.
18. Mrs Chiswell Williams stated that following the fall of the tree after adverse weather, on 5<sup>th</sup> December, the agent (Messrs Bright Willis) for the adjoining property, on whose car park the tree had fallen, instructed contractors (Messrs Venture Tree Services) to remove the tree and the work was carried out for the sum of £1,440.00 including VAT.
19. An insurance claim was submitted by Mrs Chiswell-Williams but was rejected by the Applicant's insurers the Tribunal was told.

20. On 13<sup>th</sup> June 2014 Remus Management Ltd, as agents for the Landlord, applied to the Tribunal for dispensation under section 20ZA of the Act

### **Respondent's Submissions**

21. Mr Zaman stated that his main concern was lack of consultation formal or otherwise from Remus.
22. Mr Zaman stated that he was present when, in October 2013, two tree surgeons attended the property to inspect the tree in question.
23. From December 2013 to the application in June 2014 Mr Zaman said that nothing was heard from the agent and in particular two letters, alleged to be sent in May 2014, were not received.
24. Asked if Mr Zaman considered he was prejudiced by the actions of the agent, he admitted that as a result, the work had in fact been undertaken at a lower cost than it would have cost if contractors instructed by the Applicant in consultation with the tenants had been instructed.

### **The Tribunal's Deliberations**

25. The Tribunal considered all the written and oral evidence presented as summarised above.
26. The Tribunal was not assisted by the Applicant's failure to produce relevant documents relating to the history of the incident. In particular, copies of the file note relating to the verbal estimate and report, the alternative estimate or indeed, the actual invoice were not produced at the hearing nor were they with the papers submitted. A request for copies of these documents to be sent to the Tribunal and the lessees was issued after the hearing and was complied with. In making its decision the Tribunal, therefore, had sight of all the relevant documentation.

### **Dispensation**

27. The approach for the Tribunal to take when considering an application for dispensation was set out in the Supreme Court's judgement in *Daejan Investment Limited v Benson et al* [2013] UKSC 14. In summary the approach to be adopted is as follows:
  - (1) The Tribunal should identify the extent to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;
  - (2) That no distinction should be drawn between "a serious failing" and "technical error, minor or excusable oversight" save in relation to the prejudice it causes;
  - (3) That the financial consequence to the landlord of not granting a dispensation is not a relevant factor when the Tribunal is considering how to exercise its discretion under section 20ZA;
  - (4) The nature of the landlord is not a relevant factor.

28. Applying the tests set out above the Tribunal concluded that no prejudice to the tenants had occurred. The fallen tree (itself an act of God) had required removal as a matter of urgency and thus, it was simply not practicably possible for the Applicant to carry out any consultation exercise or to apply for dispensation beforehand. The tree had fallen mainly on adjoining property and had been removed by a contractor instructed by agents or manager of that adjoining property and thus, the Applicant had no input into the choice of contractor used.
29. The cost of the work exceeds the section 20 limit of £250.00 per property by £110.00.
30. The only written quote obtained by the Landlord from Messrs T Moseley and Son was £3,720.00 inclusive of VAT which equals £930.00 per tenant. Thus the tenants have saved £570.00 each by Venture undertaking the work and as Mr Zaman conceded, obtained a better deal as a result of other contractors doing the work. The Tribunal is, as a consequence, unable to identify any prejudice suffered by the tenants.
31. The Tribunal concluded that dispensation, under section 20ZA of the Act should be granted.
32. The reasonableness of the cost and standard of the work proposed is not in issue before this Tribunal. This Application only asks the Tribunal to dispense with the consultation requirements. It is not an application to consider the reasonableness of the works or the reasonableness or payability of the service charge which will arise from this expenditure. If there is any dispute about those matters, then it will have to form the basis of a separate application under section 27A of the Act.

### **Appeal Provisions**

33. 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).

Robert T Brown  
Chairman