



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

**Case Reference** : **BIR/41UC/LDC/2019/0007**

**Property** : **Combermere  
25 Avenue Road  
Malvern  
Worcestershire  
WR14 3AY**

**Applicant** : **Combermere Management Company Ltd**

**Applicant's  
Representative** : **Taylor Clarke Ltd**

**Respondents** : **Naomi Levine (Flat 1)  
Nicholas Wheeler & Elizabeth Ingles (Flat 2)  
John King (Flat 3)  
25 Avenue Road,  
Malvern,  
WR14 3AY**

**Type of Application** : **Application for the dispensation of all  
or any of the Consultation  
Requirements provided for by Section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Mr N Wint FRICS**

**Date of Inspection** : **11<sup>th</sup> September 2019**

**Hearing** : **Paper Determination**

**Date of Decision** : **19<sup>th</sup> September 2019**

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**DECISION**

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## **Background**

1. By Application dated 23<sup>rd</sup> August 2019, received by the Tribunal on 28<sup>th</sup> August 2019 the Applicant, through its Managing Agents, Taylor Clarke Limited, applied to the Tribunal for Dispensation from the Consultation Requirements imposed by Section 20 of the Landlord & Tenant Act 1985 ('the Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as Combermere, 25 Avenue Road, Malvern, Worcestershire, WR14 3AY.
2. The Application requested that the matter be dealt with on the Fast Track as urgent repairs were required to a chimney which was in danger of collapsing in high winds. The Tribunal issued Directions on 29<sup>th</sup> August 2019.

## **The Facts**

3. The property at 25 Avenue Road, Malvern, Worcestershire comprises of 3 self-contained flats originally converted from a single residential house. Based on the date of the Lease, the Tribunal assumes that the conversion was completed some 36 years ago.
4. The Applicant in this case is the Management Company and the Respondents are the various long leaseholders of the flats whose details are given in the Schedule attached to this decision. Although it is not material to the Decision, it is worth noting that all the Respondents are Directors of the Applicant Management Company and jointly own the freehold of the property. As such, they are therefore, both Applicant and Respondents in this matter.
5. Clause 4 of the lease provides for the Management Company to be responsible for the repairs which are required under this Application and for which the Respondents pay a maintenance charge.
6. The Tribunal carried out an inspection on 11<sup>th</sup> September 2019 in the presence of Mr J Clarke of Taylor Clarke Ltd (the Applicant's Representative and Managing Agent).
7. The property comprises 3 flats, one each set out on the ground, first and second floors of the building. The property is brick built surmounted by pitched and flat felt roofs. It is estimated by the Tribunal that the property was built in the second half of the 19<sup>th</sup> Century.
8. According to the Application, work is required to repair one of the chimneys to the property.
9. The Tribunal noted at its inspection that work had been completed to the chimney although it understands from the Applicant that the roof repairs which were originally the subject of the Section 20 Consultation have not yet been undertaken. As such the scaffolding was still erected at the property.
10. The Tribunal was informed by the Applicant's Representative that the chimney had been re-built using the original bricks as the property is situated in a Conservation Area.

11. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements as it considers the work to be urgent. The Applicant also confirms that it has carried out some consultation with the leaseholders who are all Directors of the Management Company and support the application. No evidence of support (or otherwise) was given to the Tribunal.

12. Briefly the timeline is as follows:

- a) The Applicant had arranged for general roof repairs to be undertaken which necessitated the erection of scaffolding to gain access to the roof area. The Tribunal understands that this included repointing the chimney in question. The Applicant confirms in its submission that this work was being undertaken following a Section 20 consultation.
- b) The Applicant further submits that when the scaffolding had been erected and a closer inspection of the roof was being undertaken it was noted that the chimney was in *'a much worse condition than originally thought. Some of the bricks in the lower third of the chimney could be taken out by hand as all of the pointing had deteriorated around them, the chimney was leaning badly and also moved when slightly pushed at the top'*. This led the Applicant to believe that the chimney was dangerous and required immediate repair work.
- c) The Applicant provided to the Tribunal a copy of a letter from AES Roofing Contractors Ltd dated 30<sup>th</sup> August 2019 confirming that the chimney (which it was originally intended to repoint) needed rebuilding as it would cause a health and Safety issue in storm like conditions unless the work was carried out.
- d) The Applicant also submitted two photographs of the chimney from which it is evident to the Tribunal that the condition of the pointing is poor and it is clear that extensive works are required.
- e) The Applicant has obtained two quotations for the additional repairs to the chimney:
  - 1) AES Roofing Contractors Ltd at a cost of £2160.00.
  - 2) Philpotts Roofing & Construction at a cost of £2190.00.

13. The Applicant submits in its statement that it has accepted the lower quotation from AES Roofing Contractors Ltd and that the work commenced on 28<sup>th</sup> August 2019. The work was hopefully to be completed during the week commencing 2<sup>nd</sup> September 2019.

14. The Tribunal understands, based on the Application and the Applicant's submission that the Application for Dispensation is sought:

- a) Because there is a risk that the chimney could collapse in high winds causing a danger to the building as well as its occupants.
- b) That the chimney is situated close to the on-site parking area which will pose an additional hazard to anyone using the car park.

- c) That it is preferable to carry out the work while the scaffolding is in place to avoid the additional cost of re-erecting the scaffolding in the near future.
15. The Tribunal infers from the submissions that if the full consultation process was to be undertaken, the delay could result in further damage to the structure of the chimney, the potential damage to the building and persons if the chimney was to collapse and the additional cost of carrying out the work as a separate item rather than in conjunction with the works already planned with inevitably additional costs to the lessees.
16. The Tribunal notes that the Leaseholders have all been informed and had an opportunity to comment on the proposed works and costs but no observations were received. The Tribunal enquired at the inspection, from the Applicant's Representative, if any further representations or comments had been received from the Respondents and it was confirmed by Mr Clarke that no representations from any of the Respondents had been received by him with the exception of the general comment that they appreciated the works were required.

### **The Law**

17. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
18. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).
19. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An Application to grant dispensation may be made before or after the commencement of the works.

### **The Tribunal's Decision**

20. It is evident to the Tribunal that the work is urgent, and if the work is delayed further damage (which would be more expensive to repair) could occur.
21. It is also evident to the Tribunal that the defects to the chimney presented a real potential danger to both the building and persons using the building whether they are residents or visitors.
22. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult. Indeed, they would, in the Tribunal's view, be significantly prejudiced if the work is delayed.

23. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should resolve the defects to the chimney.
24. The Tribunal is also influenced by the fact that none of the Respondents have made any submission to the Applicant or, more importantly to the Tribunal either opposing or commenting on the Application.
25. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.
26. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

### **APPEAL**

27. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS.  
Chairman.

First-tier Tribunal Property Chamber (Residential Property)

**SCHEDULE OF RESPONDENT LEASEHOLDERS**

<b>FLAT NUMBER</b>	<b>NAME OF OWNER</b>	<b>ADDRESS</b>
1	Naomi Levine	Flat 1, Combermere, 25 Avenue Road, Malvern, WR14 3AY
2	Nicholas Wheeler & Elizabeth Ingles	Flat 2, Combermere, 25 Avenue Road, Malvern, WR14 3AY
3	John King	Flat 3, Combermere, 25 Avenue Road, Malvern, WR14 3AY