



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

<b>Case reference</b>	:	<b>CAM/33UG/LDC/2019/0013</b>
<b>Properties</b>	:	<b>1 – 3 Park House Court, Catton Grove Road, Norwich NR3 3QL</b>
<b>Applicant</b>	:	<b>Dinler Investments Ltd</b>
<b>Respondents</b>	:	<b>Ms Jade Tanner (2 Park House Court) Miss Justina Andrijauskaite &amp; Mr Kestuis Juknevicus (3 Park House Court)</b>
<b>Date of Application</b>	:	<b>4<sup>th</sup> April 2019</b>
<b>Type of Application</b>	:	<b>for permission to dispense with consultation requirements in respect of qualifying works - Section 20ZA Landlord and Tenant Act 1985 (“the Act”)</b>
<b>Tribunal</b>	:	<b>Judge J R Morris Mrs M Hardman FRICS IRRV (Hons)</b>
<b>Date of Decision</b>	:	<b>25<sup>th</sup> June 2019</b>

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## **DECISION**

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### **Decision**

1. The Applicant is granted dispensation from all the consultation requirements in respect of the qualifying works to the roof except that the Applicant must send copies of the quotations to the Respondents identifying which quotation has been selected and why.

### **Reasons**

#### **Introduction**

2. This Application has been made by the Landlord for dispensation from the statutory consultation requirements in respect of ‘qualifying works’ to remedy the damage to the flat roof immediately above Flats 2 and 3 together with issues with the coping stones on the edge of the roof, which are reported to be causing rain water to run behind the rendering causing the metal mesh behind the render to rust and bleed through the surface. The application is said to be urgent, as there is leakage to Flat 2 and signs of water damage to Flat 3.

3. The Applicant stated on the Application Form that quotations were being obtained to repair or replace the flat roof (estimated size 180 square metres). Several areas of damage and cuts in the sarnfil membrane were causing leaks into Flats 2 and 3. A letter of 1<sup>st</sup> Notice was sent to the Respondents on 21<sup>st</sup> March 2019 identifying and informing the leaseholders of the intention to carry out the proposed works. This was sent via email to the Respondents as the residential leaseholders who are on the first floor and to the commercial tenant on the ground floor. A copy of this letter was provided.
4. The letter stated that the water ingress had been drawn to the Applicant's attention on 18<sup>th</sup> March 2019. It set out the shared contribution as follows:  
Flats 2 and 3 25% each  
Commerical premises 50%  
The letter said that the roof would require repair or possibly replacement. The Respondents were invited to nominate a contractor.
5. The reason for seeking dispensation is that the leaks have become more apparent and the leaking more rapid, causing health hazards. These hazards include the potential for the water to leak onto electrics and the leaks have also rendered a child's bedroom unuseable. The leaks also are causing ceiling and wall damage to the flats.
6. A procedural chair issued directions timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers taking into account any written representations made by the parties and a decision would be made on or after 17<sup>th</sup> June 2019. It was made clear that if any party requested an oral hearing one would be arranged. No such request has been received.
7. Attached to the Directions was a reply form to be completed by the Respondents who opposed the Application.
8. The Respondents completed the Reply Form as follows:
9. Ms Jade Tanner said that she objected to dispensation being given. She said that a temporary measure of covering the leaks to the roof should be undertaken while preparing for a larger job to be done on the whole roof. The Applicant decided to proceed with the works and make this application under section 20ZA.
10. E mails from Ms Tanner to the Applicant included with the representations emphasise the need for urgent action to repair the roof.
11. Miss Justina Andrijauskaite said that she too objected to dispensation being given as she was under the impression that it was for the Applicant to meet the cost of repairing the roof. She said that if the roof had been maintained properly in the past the present problems would not have arisen.
12. The Applicant provided a number of quotations as follows:
  - GR Wymer for rendering
    - scaffolding £4,000.00 & rendering £9,500.00
  - Industrial Building Maintenance 3 versions depending on the level of repair and replacement (all include VAT)
    - Verson 1 £11,908.80
    - Verson 2 £6,794.40

- Version 3 £3,619.20
- LMB Flat Roofing (includes VAT)
  - Scaffolding £6,120.00
  - Re-roof £12,600.00
  - Coping £5,234.86
- Image Home Improvements
  - Re-roof with sarnfil £16,500.00 plus VAT
  - Re-roof with epdm £21,400.00 plus VAT
- Alpha Roofing Services
  - Access £986.00 plus VAT
  - Repairs £620.00 plus VAT

## The Law

13. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 3 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a fairly complicated and time consuming consultation process which give the lessees an opportunity to be told exactly what is going on and the landlord must give its response to those observations and take them into account.
14. There are in effect four stages:
  - 1) First, a Notice of Intention must be served which describes the work and explains why it is necessary and invites tenants to nominate contractors and make observations within 30 days.
  - 2) Secondly, estimates must be obtained.
  - 3) Thirdly, the Landlord must prepare at least two proposals and invite tenants to make observations within 30 days.
  - 4) Fourthly, the Landlord must state why he has awarded the contract if it is not to the lowest tender.
15. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with all or part of the consultation requirements if it is satisfied that it is reasonable and the Tenants have not suffered prejudice.

## Discussion

16. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
17. In considering the representations made by Ms Tanner and Miss Andrijauskaite the Tribunal found that both felt that if the work had been carried out sooner then the repairs may not have been as expensive. As it is, a full replacement may have to be undertaken. Therefore they consider the costs are likely to be unreasonable.
18. This is not an issue that the Tribunal can address at this stage. However, when the service charge demands in respect of these works are sent out, any Respondent who objects to the cost or the reasonableness of the work or the way

it was undertaken, may make an application to this Tribunal under section 27A of the Act.

19. Ms Tanner agrees that the work was urgent.
20. Miss Andrijauskaite believes that she is not liable for the work under the Lease. The tribunal has examined the Lease and the main structure which includes the roof is not a part of the demise i.e. the flat, and is a responsibility of the Landlord. However the Landlord is able to charge for the maintenance of the Main structure including the roof through the Service Charge.
21. Taking into account the urgency of the work, it would clearly be unsatisfactory and a major inconvenience to the Respondents for the roof to remain unrepaired for several weeks while the consultation process was being completed. It is therefore sensible for the Applicant to proceed with the works as soon as possible and there is no evidence that some dispensation would cause any prejudice to the Respondents. It is therefore reasonable to grant dispensation.
22. However, the Tribunal is of the opinion that the Respondents would suffer some prejudice if dispensation were given for all stages. The Applicant has to some extent complied with the first stage of giving Notice of Intention. To enable the Respondents to plan for the work both financially and in respect of the disruption it may cause, the Applicant must send copies of the quotations to the Respondents setting out why it has been decided to do the particular work (i.e. repair or replacement) and why the particular contractor has been chosen to do the work e.g cost, length of guarantee, availability to do the work. This is a partial amalgam of the third and fourth stages.

### **Judge JR Morris**

#### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.