



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

**Case reference** : **BIR/00CS/LDC/2020/0013**

**HMCTS** : **Paper**

**Properties** : **1 – 6 & 20 – 25 Fairyfield Court, Newton Road,  
Great Barr, Birmingham B43 6AS**

**Applicant** : **Malcolm Carter & Susannah Segal  
(Freeholder & Landlord)**

**Representative** : **Proxima Property Management**

**Respondents** : **The Long Leaseholders of Flats 1 – 31 Fairyfield  
Court, Newton Road, Birmingham, West  
Midlands B43 6AJ listed in the Application [there  
is no flat numbered 13]**

**Date of Application** : **16<sup>th</sup> October 2020**

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

**Tribunal** : **Judge J R Morris  
Mr I Humphries BSc (Est Man), FRICS**

**Date of Directions** : **20<sup>th</sup> October 2020**

**Date of Decision** : **30<sup>th</sup> December 2020**

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**DECISION**

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## **Covid-19 Pandemic**

This determination on the papers has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the case is to be determined wholly on the papers because it is not reasonably practicable for a hearing, or to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

### **Decision**

1. The Applicant is granted dispensation from the consultation requirements in respect of the qualifying works to the roof.

### **Reasons**

#### **Introduction**

2. This Application has been made by the Landlord for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from all or some of the statutory consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of 'qualifying works'.
3. The qualifying works are the replacement of the current roof of the Property with a new roof ("the Works").
4. Directions were issued on 20th October 2020 which stated that the Application would be determined on or after 21<sup>st</sup> December 2020 based on written representations and without an inspection.
5. The Directions required the Applicant to display prominently at the Property and serve on each of the Leaseholders a copy of the Application with any accompanying documents which included an attached form, these Directions and the covering letter and confirm this had been done by 28<sup>th</sup> October 2020. The Applicant informed the Tribunal that the Direction had been complied with on 23<sup>rd</sup> October 2020.
6. The Leaseholders were required either jointly or individually to complete and return to the Tribunal, with a copy to the Applicant, the attached form by 13<sup>th</sup> November 2020 indicating whether:
  - They consented or opposed the Application
  - Wished to name a spokesperson
  - Wished to hold a hearing which shall be video or telephone conference.

7. Replies were received from the Leaseholders of Flats 1, 2, 3, 4, 5, 7, 10, 19, 20, 24, 26, 27, 28 and 29 all of whom consented to the Application and none requested a hearing. No objections to the Works were received.
8. The Applicants were required to prepare a Bundle for the Tribunal by 27<sup>th</sup> November 2020 with a copy to any leaseholder who opposes the Application.
9. The Applicant complied with the Directions to provide a bundle to the Tribunal on 27<sup>th</sup> November 2020. The Bundle included the following documents:
  - 1) A Statement of Case giving reasons for the Application.
  - 2) A copy of a letter sent by the Managing Agent to all Leaseholders on 15<sup>th</sup> October 2020 explaining the Works to be carried out, setting out the cost of the three estimates and informing Leaseholders of the intention to make the Application as the Works were considered to be urgent.
  - 3) A copy of each of the estimates obtained as follows:
 

Whittle Programmed Maintenance	
Block 20 – 25	£16,850.00 plus VAT
Block 1 – 6	£16,450.00 plus VAT
Total	£33,300.00 plus VAT
Droitwich Roofing	
Block 20 – 25	£19,556.00 plus VAT
Block 1 – 5	£19,866.00 plus VAT
Total	£39,422.00 plus VAT
Brindley Asphalt	
Block 20 – 25	£23,252.00 plus VAT
Block 1 – 6	£21,277.00 plus VAT
Total	£44,529.00 plus VAT
  - 4) A copy of a sample Lease which was for Flat 11 dated 14<sup>th</sup> November 1963 between Page-Johnson Construction Limited (the Lessor) (1) and Richard Owen (the Lessee) (2) for a term of 99 years from 25<sup>th</sup> March 1972 confirming the Leaseholders hold long leases.
    - a) Under Clause 4(23) of the Lease the Lessee covenants:
 

*To pay the due proportion attributable to the said flat and garage of the cost of the maintenance repair renewal and insurance of the said Block of Flats and common grounds and provision of the services as more particularly specified in the Schedule hereto.*
    - b) Under Paragraph 2 of the First Schedule the services include:
 

*The maintenance repairing and renewing of the following matters or things used or enjoyed by the Lessee in common with the Lessor and other tenants of the said Block of Flats and Garages: -*

      - (a) *The roofs gutters pipes and other things for conveying rainwater form the said building*

## Description of the Property

10. The Applicants' Representative was appointed by the Freeholder and Landlord, who are the Trustees of the Locker Foundation, to manage the Development of Fairyfield Court as of 1<sup>st</sup> April 2019. Prior to this the Development was managed by SDL Bigwood. The Applicants' Representative provided a description of the Property of two Blocks and the Development in which they are situated as follows.
11. Fairyfield Court is made up of five individual blocks each containing six flats of three storeys. They were constructed in the early 1970s of brick elevations under a double pitched concrete tile roof. The two ground floor flats of each Block have their own independent entrances and do not use the main entrance door located on the first floor. The remaining four flats use the main entrance to access their flats and the internal stairs. The approach to the main entrance door is via a set of concrete steps. The Blocks share a communal garden area.

## The Law

12. 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 gives 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.
13. 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.
14. 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.

## Statement of Case

15. The Applicants' Representative stated that following the severe storm experienced towards the end of August 2020, the Leaseholders of Flats 5, 6 and 25 reported water ingress through the roof into their living area. Contractors, Brindley Asphalt, were immediately called to assess the problem, erecting full scaffolding to access the roofs and estimates sought for the repair work needed.

16. The contractor reported that the roof will need to be stripped completely of the ridge, verge and roof tiles, battens and felt and install a new layer of Klover Permo Breather Felt to remedy the issue of water ingress. The water ingress creates a health and safety issue in that residents are experiencing heavily water damaged living areas and now the slightest rainfall finds its way through.
17. Three contractors' estimates were obtained and Whittle Programmed Maintenance was accepted as the lowest price. As the Works were urgent an order was sent on 18<sup>th</sup> November 2020 and a start date requested.
18. Noting that the cost of the works was more than £250.00 per unit, a letter was sent out to all Leaseholders on 15<sup>th</sup> October 2020 advising of the emergency nature of the Works, which also explained the consultation procedure under Landlord and Tenant Act 1985 and the Applicants would be seeking dispensation from them to enable the Works to commence immediately.
19. It was submitted that the Applicants and their Representatives, the Management Company, have acted diligently in addressing the immediate maintenance needs of the Blocks. 15 Leaseholders have responded in support of the Application for dispensation and no objections have been received.
20. The letter to the Leaseholders dated 15<sup>th</sup> October 2020 stated that:

*During the recent bad weather there have been a number of water ingress problems reported by leaseholder in the top floor flats in Block 1 – 6 and Block 20 – 25 at Fairyfield Court.*

*The contractors, whom Proxim instructed to investigate, report that there are a number of broken and damaged roof tiles, the tile battens (to support the tiles) are rotten and the roofing felt under the tiles has disintegrated through age and saturation.*

*These defects have resulted in severe water ingress into the flats and have caused considerable distress and inconvenience to the residents of the top floor flats of each block. Temporary repairs have been undertaken but a more permanent solution is now required.*

The Works required were set out as follows:

*To supply and erect scaffolding to the perimeter of the building to allow access for the roofing works, including all debris chutes. Strip off completely ridge, verge and roof tiles, batten and felt, remove and dispose by licenced skip. Renew with breathable felt the entire roof, supply and install treated laths and new pan tiles to match existing, supply and install new dry ridge and verge system. Including all lead sleeves and, in the case of Block 20 – 25, install a lead gully between buildings, as required.*

The letter then set out the estimates and the need for the Section 20 procedure and the intention to apply for dispensation from it.

*The costs involved will fall to the service charge, with monies held in the reserve fund used to offset the costs, so no additional demands will be raised at this moment in time. However, no guarantee can be given that there will not be a*

*deficit at the end of the service charge year, owing to other expenditure that may be required over and above the sums already budgeted.*

## **Decision**

21. 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.
22. The Tribunal found that the Applicants and their Representative had complied with the basic principles of Section 20 procedure through the letter of 15<sup>th</sup> October 2020 to the Leaseholders be it as it may in a truncated form. This letter had informed the Leaseholders of the intention to carry out the Works, it described the Works and explained why they were necessary. It also showed that in accordance with the legislation three estimates had been obtained, it stated their cost and informed the Leaseholders that the lowest estimate had been accepted. The letter also stated that the cost would initially be met by the reserve fund but that a further charge might be needed. The letter also gave an opportunity for the Leaseholders to ask questions and comment.
23. The letter had met most of the legislative requirements except in time and the Tribunal found that the urgency of the work justified this to be dispensed with. 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 dispensation would cause any prejudice to the Respondents. The Respondents have also had an opportunity to voice either their consent or opposition to the Works through the Tribunal procedure. Those Leaseholders that responded to the Tribunal's form attached to the Directions expressed their consent to the Works. The Tribunal is therefore satisfied that it is reasonable to grant dispensation.
24. The parties should note that this is not an application to determine the reasonableness of the standard of the works or their cost and payability. The Decision does not preclude either party making an application to the Tribunal under section 27A of the Act.

**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.