



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

Case reference : **BIR/47UC/LDC/2020/0017**

Property : **St Andrews House, 38 Graham Road,
Malvern, Worcestershire WR14 2HL**

Applicant : **Idris Davies Ltd**

Representative : **Taylor Clarke Ltd**

Respondents : **Mr T Willcocks (1)
Mr S Rayson (2)
Mr & Mrs R D Cronin (3)
Mr P & Mrs W Thompson (4)
Mr M Dunsmore (5)
Ms J Evans & Mr H Tootal (6)**

Representative : **None**

Type of application : **Application for the dispensation of all or
any of the consultation requirements
provided for by section 20 of the
Landlord and Tenant Act 1985**

Tribunal member : **Judge C Goodall
Mr I Humphries FRICS**

**Date and place of
hearing** : **Paper determination**

Date of decision : **26 February 2021**

DECISION

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Background

1. The freehold interest in St Andrews House (“the Property”) is owned by the Applicant. It is let on six long residential leases to the Respondents.
2. It is said that the flat roof above the entrance porch is leaking and the leak has caused damage to the internal plaster on the walls and ceiling. In parts, the plaster work has collapsed leaving exposed laths.
3. The Applicant regards itself as responsible for the repair of the roof and the consequential damage (“the Works”), under the leases, but it expects to recover the cost from the Respondents via a service charge provision in the leases.
4. Having obtained an estimate, it became apparent to the Applicant that the cost of repair is likely to exceed £250 per flat. Accordingly, under section 20 of the Act, it has become necessary either for the Applicant to consult on the repair, or to obtain dispensation, as otherwise it would be prevented in law from claiming more than £250 per flat from each Respondent.
5. The Applicant therefore applied on 15 December 2020 for a determination by this Tribunal that the consultation requirements be dispensed with.
6. The application has been served on the Respondents who have all been entitled to object to the application should they wish. None have. The first and third Respondents have both indicated they agree with the application. The other Respondents have not responded to the application.
7. No party has requested an oral hearing, and the Tribunal does not consider an oral hearing is necessary. Accordingly, the application has been considered on the basis of the written application alone. This is the Tribunal’s decision on the application.

The Law

8. The law on the requirement to consult, and a landlord’s right to request dispensation from that requirement is contained in section 20 and 20ZA of the Act. Section 20 provides (so far as is material to this application):

Section 20 Limitation of service charges: consultation requirements

- (1) Where this section applies to any qualifying works ..., the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or

- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal [now the first-tier tribunal, Property Chamber].
- 9. The relevant contribution is the amount a tenant may be required to contribute under his lease (sub-section (2)).
- 10. Sub-sections (6) and (7) of section 20 limit the tenants “relevant contribution” to an “appropriate amount”, which is currently £250 (see SI 2003/1987, reg 6).
- 11. Section 20ZA provides (in so far as is relevant):

Section 20ZA Consultation requirements: supplementary

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- 12. If dispensation from consultation is not granted, a landlord must comply with the Service Charges (Consultation Requirements) (England) Regulations 2003. Regulation 7 and the various schedules to the regulations set out the requirements. Part 2 of Schedule 4 applies to qualifying works for which public notice is not required, which would be the position for the types of works in issue in this case. Broadly, this schedule requires that notice of proposed works, describing them, setting out the reasons for them being required, and inviting observations and the names of people from whom the landlord should seek an estimate of cost, should be given to tenants. The landlord is under a duty to have regard to the tenant’s observations. He must endeavour to obtain an estimate from any contractor suggested by the tenants. At least two estimates must be obtained, one of which should be from a person wholly unconnected with the landlord, on which the tenants are entitled to make observations to which the landlord must have regard. When a contract is awarded by the landlord, notice must be given to the tenants with a statement of reasons for awarding that contract. The Tribunal should stress this is only a broad outline, and is no substitute for a detailed consideration of the schedule.
- 13. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

The lease terms

14. The terms of the leases are relevant to an application for dispensation from consultation because dispensation is only required if the lessees are required to contribute towards the cost of the proposed works under their leases (see section 20(2) above).
15. The Tribunal has been supplied with a copy of the lease for flat 2. We assume that all other leases are in similar form, though we imagine that the service charge contributions will vary.
16. The flat 2 lease is dated 28 April 1975 and is for a term on 99 years at a ground rent of £1 per annum. A premium was paid.
17. The lease obliges the lessor (in clause 5(4)) to “maintain and keep in good order and substantial repair and condition ... the main structure of the House including the foundations and the roof thereof with its gutters and main water pipes...”.
18. The lessee agrees to pay (in clause 4(2)) “such sum as shall be Twenty-two percent of the costs expenses outgoings and matters mentioned in the Fourth Schedule”.
19. The Fourth Schedule includes within its list of costs towards which the lessee has to contribute “All costs and expenses incurred by the Lessor for the purpose of complying with her obligations under sub-clause (4) ... of Clause 5 of this Lease”.

The Works

20. The flat roof above the entrance porch at the Property is leaking and has caused damage to the internal plaster on the walls and caused the ceiling plaster to fall down. Two roofing contractors have been consulted who have found numerous issues with the roof and have recommended that the current lead roof be replaced with a fibreglass roof. Both contractors have provided quotations for replacement of the roof with a glass reinforced polyester / fibreglass surface.
21. The quotes are variously for £2,610 (no VAT is mentioned) and £4,480 plus VAT. The quotes do not include internal replastering or redecoration.

Communications between the Applicant and the Respondents

22. The Tribunal has been told that the Applicant informed the Respondents that a contractor would be assessing the roof on 17 November 2020. They then emailed the Respondents on 18 November 2020 to say the contractor recommended replacement of the roof. On 23 November 2020, the Respondents were sent a copy of the quotation with a quotation for repair rather than replacement for comparison. Comments were invited. On 9 December 2020, the Respondents were contacted again with a copy of the second quotation and their comments were again invited. On 15 December 2020, the Applicant informed all residents that it intended to go for the replacement option, and it intended to accept the lower of the two

quotations received. It intended to make an application to this Tribunal for dispensation from consultation.

Respondent's response to this application

23. The Tribunal issued directions on 21 December 2020 inviting the Respondents to either consent to or oppose the application. Two Respondents replied to give their consent to the application proceeding. No other response was received from any other Respondent.

Discussion and decision

24. This application only relates to the issue of whether to grant dispensation from consultation under section 20 of the Act. The issue for us is whether the Respondents would be prejudiced were we to do so, as they would be denied the protection afforded by the consultation requirements.
25. We are satisfied that, at least in respect of Flat 2, the Works fall within the repairing covenant in the lease, and the contribution required from the lessee of Flat 2 towards the costs of the Works would exceed £250, so that consultation or dispensation is required for the Applicant to be able to recover the excess.
26. We are satisfied that no prejudice would be suffered by the grant of dispensation in this case. The Applicant has kept the Respondents informed of their thinking and actions to resolve the disrepair. No Respondent has raised any concerns about the proposal for dealing with the disrepair or has objected to this application. This application for dispensation will save the costs of a formal consultation. We think that dispensation should be granted.
- 27. The Tribunal grants dispensation to the Applicant from the obligation to consult under section 20 of the Act in respect of the Works.**

Appeal

28. 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.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)