



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

Case Reference : **CAM/00KF/LDC/2022/0011**

**HMCTS code
(paper, video, audio)** : **P:PAPERREMOTE**

Property : **336 Fairfax Drive, Westcliffe-on-Sea, Essex SS0 9LU**

Applicant : **Southern Land Securities Limited**

Representative : **Nick Hristov, Together Property Management**

Respondents : **All leaseholders of dwellings at the property (including any of their sub-tenants of any such dwelling) who are liable to contribute to the cost of the relevant works**

Type of application : **For dispensation from consultation requirements - Section 20ZA of the Landlord and Tenant Act 1985**

Tribunal members : **Alan Tomlinson BSc(Hons) MRICS**

Date of decision : **13th June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in an electronic bundle of 45 pages prepared by the Applicant. I have noted the contents and my decision is below.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in respect of the qualifying works to repair the external render.

Reasons for the tribunal's decision

The application

- (1) This is an application to seek dispensation with the statutory consultation requirements in respect of works required to repair the external render.
- (2) The Applicant says that urgent repair was required to stop a leak through the render into the Lower Maisonette, so no consultation has been carried out.
- (3) The Managing agent was informed by the leaseholder of the Lower Maisonette that water was leaking internally due to damaged external render. On inspection, the contractor asked to investigate found urgent repairs were required.
- (4) The Applicant indicated they would be sending a notice of intention in April 2022.
- (5) The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the "**1985 Act**") and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
- (6) In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
- (7) **The only issue here for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements**
- (8) **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable or by whom they are payable.**

The Property and parties

- (9) The Property comprises a semi-detached residential building built in 1884 of solid brick under a pitched, tiled, roof with dormer windows to the rear. The property was subsequently converted into flats.
- (10) The application is made by Nick Hristov, Together Property Management on behalf of the landlords, Southern Land Securities Limited. The application was made against the leaseholders of the relevant flats (the “**Respondents**”)

Procedural history

- (11) The Applicant said that the works were urgent, as explained below.
- (12) Initial case management directions were given on 24th March 2022. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder (and the landlord if they wished to be joined to the proceedings to make representations) was required to respond by 22nd April 2022.
- (13) The directions provided that this matter would be determined on or after 16th May 2022 based on the documents, without a hearing, unless any party requested an oral hearing.
- (14) On 8th April 2022, the Applicant sent the copy documents to the Respondents as directed.
- (15) No leaseholder has responded to the tribunal, and no party has requested an oral hearing. In the circumstances,
- (16) On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant’s case

- (17) Documentation provided by the Applicant stated that damaged external render was allowing water to leak into the Lower Maisonette which required urgent repair to prevent further damage.
- (18) Works to the render were completed with no further reports of water ingress.
- (19) An invoice raised by the Contractors on 4th April 2022 in the sum of £1,170 (One Thousand, One Hundred & Seventy pounds).

The Respondents' position

- (20) As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
- (21) The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed.

The tribunal's decision

- (22) 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.
- (23) This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
- (24) The tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to works required to repair the render and prevent further water ingress.
- (25) It therefore determines under section 20ZA of the 1985 Act to dispense with all relevant consultation requirements in relation to these works.
- (26) **This is not an application for the tribunal to approve the reasonableness of the works, apportionment or payability of the service charge demand. I make no finding in that regard and the leaseholders will continue to enjoy the protection of Section 27A of the Act.**
- (27) There was no application to the tribunal for an order under section 20C of the 1985 Act.
- (28) The Applicant shall be responsible for serving a copy of this decision on all leaseholders.

**Alan Tomlinson BSc(Hons) MRICS
13 June 2022**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).