



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

Case Reference : **CAM/26UL/LDC/2022/0024**

Property : **1-35 Stonehills House,
Welwyn Garden City,
Herts. AL6 6DL**

Applicant : **Stonehedge Ltd**

Representative : **Alliance Managing Agents
(Managing Agent)**

Respondents : **Leaseholders of Flats 1-35**

Representative : **None**

Landlord : **Stonehedge Ltd.**

Type of Application : **S20ZA of the Landlord and Tenant
Act 1985 - dispensation of
consultation requirements**

Tribunal : **N. Martindale FRICS**

Hearing Centre : **Cambridge County Court, 197 East
Road, Cambridge CB1 1BA**

Date of Decision : **29 July 2022**

DECISION

Decision

1. The Tribunal grants dispensation from the requirements on the applicant to consult all leaseholders under S.20ZA of the Landlord and Tenant Act 1985, in respect of the qualifying works in this application. Dispensation is granted on terms, as set out at the conclusion.

Background

2. The landlord through its managing agent applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application related to defects identified from an inspection and investigation of the shared main rainwater downpipe leading from one or more parts of the roof over the building of which the 35 flats form the principal part, and through commercial sections on the lower two floors.
4. After a camera inspection of the downpipe, cracks were found in one or more sections, allowing rainwater to leak into surrounding areas of the building. The cast iron downpipe below the roof hopper is located within, the building.
5. Work is urgently required to reseal the pipe, by means of a flexible liner to be inserted from the top and run down the entire length to at least the ground level. The work is to be carried out by specialist contractors employed by the landlord who is responsible, and costs arising recharged to all leaseholders in accord with the terms of their leases. Costs may be recharged in part to commercial areas, but this aspect falls outwith this determination.

Directions

6. Directions dated 21 June 2022 were issued by Regional Surveyor Mary Hardman FRICS IRRV (Hons), without an oral hearing.
7. The applicant was, by 29 June 2022 to send to each of the leaseholders a copy of the application form and the Directions and where possible an estimate of the costs of the proposed works inclusive of any professional fees and VAT. They were to certify compliance to the Tribunal of actions taken and dates. This they did in their reply letter dated 20 July 2022 to the Tribunal.
8. Leaseholders who objected to the application were to send a reply form and statement to the Tribunal by 13 July 2022. The applicant was to prepare a bundle of documents including the application form, Directions,

sample lease and all other documents on which they wanted to rely; with 2 copies to the Tribunal and 1 to each respondent leaseholder and to do so by 22 July 2021. The applicant complied before the due date.

9. In the event, the Tribunal did not receive any requests for a hearing, nor did it receive any forms from potential respondents either supporting, or objecting to the application.
10. The Tribunal determined the case on the paper bundle received from the applicant.

Applicant's Case

11. The Property appears to consist of the upper floors of a mixed commercial and residential building on 4 floors. *“The ground floor and part of the first floor is made up of commercial units and is managed by Brasier Freeth. The remaining part of the first floor, second and third floors are made up of residential units and is managed by us. Alliance Managing Agents on behalf of Stonehedge Limited.... The residential element is made up of 1 to 35 flats and has a mansard roof and 3 entrances into the block, the front side and rear.”*
12. All flats appear to be let on essentially identical leases. A sample flat lease was in the bundle.
13. In the application form at box 7 it confirms that these are to be qualifying works but, that they had not been started. At box 9 the applicant was content for paper determination and applied for it, marking at box 10, that it could be dealt with by Fast Track. A reason for urgency was given here as: *“It has been confirmed that one of the downpipes which runs from the mansard roof all the way down has numerous points where water can escape and this pipe runs inside the fabric of the building.”*
14. The application at box ‘Grounds for seeking dispensation’, 1. stated: *“A downpipe which runs inside the fabric of the building from the mansard roof all the way down was blocked and we received complaints of water ingress from one of the residential flats, and two of the commercial units. We arranged for contractors to inspect the issue and they carried out a CCTV survey and confirmed there was a blockage. Scaffolding was erected and they jetted the downpipe free however when they carried out the CCTV footage and it was clear they confirmed numerous cracks in the pipe and recommended a sleeve to be installed as a long term solution.”* They continued: *“Based on this quote for the sleeve it was clear the works would fall under qualifying works and a dispensation would be required as the works need to take place whilst the scaffolding is already up and the permit has been granted. It also needs to take place as soon as*

possible to limit the damage of possible further water ingress out of the cracks in the pipe.”

15. At 2. the applicant described the ‘consultation that has been carried out or is proposed to be carried out’. *“It has only come to light that this works will fall within a section 20 as the previous works to free the pipe fell below the amount that requires consultation... We intend to notify the leaseholders with a section 20 document (Notice of intention). Explain why we will be carting out the works immediately. We have not got additional quotes as the firm who freed the downpipe arranged for the scaffolding to be erected and the cost for this scaffolding to come down and to ask a new firm to quote for the pipe to have a long term fix such as a sleeve will also have to quote for scaffolding to be erected and to arrange a new permit etc. and this would also waste valuable time too.”*
16. The applicant included a covering letter dated 20 July 2022 summarizing its actions and their timing. They also enclosed all other documents as directed previously. These included costs of supply and fitting of the sleeve - £6750 inc VAT (Though this was without providing a VAT registration number) from Dayco Property Maintenance Ltd. scaffolding and permit at £704.26, and £234.00 both including VAT.

Respondent’s Case

17. The Tribunal did not receive any representations from the leaseholders.

The Law

18. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord’s costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
19. Dispensation is dealt with by S.20 ZA of the Act which provides:-
“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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

20. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Decision

21. The scheme of the provisions is designed to protect the interests of leaseholders and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
22. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
23. The correspondence shows that the applicant did respond to concerns from leaseholders, remedied the immediate problem of the blockage by erecting scaffolding, jetting the pipe and clearing the pipe it also found further work necessary to line the pipe for the future.
24. The terms of this dispensation are:
25. That all costs of and associated with making this application and compliance with Directions, the initial works completed before the application to this pipe and these now proposed - for the insertion of the liner, are covered by the dispensation. That the total sum to be recovered from all 35 leaseholders, though only in accordance with every lease for all of the flats subject to these qualifying works. The payment of professional fees arising in respect of pre and post application works is also covered by this dispensation from consultation. This dispensation does not extend to any other works at the Property.
26. **In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act; in this case, on terms.**



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