



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

Case Reference : **CAM/42UF/LDC/2021/0055**

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

Property : **1-20 Haverhill Garages,
Bumpstead Road, Haverhill,
Suffolk CB9 8QD**

Applicant : **Alexander Wadham-Corn**

Representative : **Grace Tuffery, Gem Estate
Management Ltd**

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 : **Mary Hardman FRICS IRRV(Hons)**

Date of decision : **17 March 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 222 pages from 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 qualifying works to refurbish the 20 garages and repair their roofs.

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 refurbish the garages and their roofs.
- (2) The Applicant enclosed a specification and other details of the proposed works with their application. The applicant indicated they would be sending a notice of intention in December 2021 and leaseholders had been advised not to use the garages until the works had been completed.
- (3) They say the relevant works are urgent to mitigate safety risks. The application was dated November 2021, but the applicant's representatives did not provide outstanding information and the application fee until 13 January 2022.
- (4) 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.
- (5) 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.
- (6) **The only issue here for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements**
- (7) **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

- (8) The Property comprises 20 purpose-built garages.
- (9) The application is made by Gem Estate Management Limited on behalf of the landlord, Alexander Wadham-Corn. The application was made against the leaseholders of the relevant flats (the “**Respondents**”)

Procedural history

- (10) The Applicant said that the works were urgent, as explained below.
- (11) Initial case management directions were given on 14 January 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 was required to respond 16 February 2022.
- (12) The directions further provided that this matter would be determined on or after 16 March 2022 based on the documents, without a hearing, unless any party requested an oral hearing
- (13) No leaseholder has responded to the tribunal, and no party has requested an oral hearing.
- (14) 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

- (15) Documentation provided by the Applicant stated that the garages were posing a safety issue and had been fenced off to prevent use until they could be repaired. Photographs provided show the flat roofed garages in a poor state of repair.
- (16) Tender documentation was sent out by Asset Consultation Consultants (ACC) on 30 November 2021 to contractors from a list of recommended firms from the membrane materials manufacturers.
- (17) Two specifications were prepared, one using IKO roofing products and one using MOY roofing products to seek to provide best value. Three firms tendered against each specification. Tenders ranged from £88,000 to £127,000.
- (18) The recommendation of ACC was that the landlord proceed with the lowest tender for the IKO specification of £89,884 excluding VAT.

However, they stated that the final sum may be lower as this included several items of provisional work.

- (19) It is not clear whether a contract has yet been awarded.

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 garages and return them to use.
- (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 or the reasonableness, 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.

Mary Hardman FRICS IRRV(Hons)
17 March 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).