



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

Case Reference : **BIR/37UC/LDC/2013/0013**

Property : **1 - 40 Royal Court, Queen Street,
Worksop SD80 2DL**

Applicant : **PPM Real Estate Management
Limited**

Representation : **Mr A Barron and Mr G Pollard**

Respondent : **Mr and Mrs Bateman and 38 others
being the Leaseholders at the
Property listed in the Schedule**

Representation : **None**

Type of Application : **Under section 20ZA of the
Landlord and Tenant Act 1985
(‘the Act’) for dispensation from
the consultation requirements in
respect of qualifying works**

Date of Application : **1st November 2013**

Date and venue of Hearing : **20th May 2014 at Worksop
Magistrates Court, Potter Street,
Worksop S80 2AJ**

Date of Decision : **05th June 2014**

Tribunal: : **Judge W J Martin
Mrs A J Rawlence M.R.I.C.S.**

DECISION

were no such application under section 27A of the Act, the Tribunal would hear the Application as a stand-alone application under section 20ZA at a later date to be advised.

7. In the event neither party made an application under section 27A of the Act, and the Tribunal proceeded to determine the Application following an inspection and Hearing, which took place on 20th May 2014 at Worksop Magistrates Court. Mr Antony Barron and Mr Gordon Pollard, both of PPM Property Management, attended the inspection and the Hearing on behalf of the Applicant. The following Respondent leaseholders were also present or represented at the Hearing:
Mr and Mrs Haydock - Flat 19
Mrs Atherton - Flat 8
Mr D East - Flat 5
Mr and Mrs Isaacs - Flat 36
Mr and Mrs Boulding - Flat 34
Mrs Wickens - Flat 32

Inspection

8. Royal Court is a retirement apartment development situated in the centre of Worksop, Nottinghamshire. There are two buildings providing a total of 39 Flats. The main three storey building, which is the subject of the Application, is of storeys construction with uPVC double glazed windows, communal lift and a conservatory. There is some residents' parking for the complex. The roof construction is a mansard design with a flat top (sometimes known as a modern mansard roof). The development was completed in 2007.
9. As the Application relates to repairs carried out to the flat part of the roof, the members of the Tribunal inspected this. They were shown (inter alia) the (replaced) Sarnifil membrane to the flat portion of the roof and the Sarnifil metal trim which replaced the flashing between the pitched and flat parts of the roof.

Irwin Mitchell's letter of 19th December 2013

10. As has already been noted, there are 39 flats at Royal Court. The majority have been sold to individual owners who reside in their apartments. However, the developer of the complex, Jaguar Retirement Homes Limited, retained the eight flats referred to in paragraph 5. above, now owned by the two companies referred to in paragraph 5. which are, it is understood, companies associated with Jaguar Retirement Homes Limited. These flats are occupied by qualifying sub-tenants. The objections to the Application contained in Irwin Mitchell's letter are summarised below. The reference in the objections to 'Respondents' means the two companies, and does not include the remaining leaseholders, who are, of course also Respondents to the Application.
11. The objections:
 01. The works were not necessary proportionate or reasonable. The Respondents' initial view is that the wholesale recovering of two thirds of the roof was unnecessary, and patch repairs would have sufficed.
 02. The cost of the work is unreasonable.
 03. The purpose of the Act is to give protection to leaseholders in relation to the service charge. If dispensation is granted the leaseholders will have lost that protection and will be liable to a combined total of approximately £20,000.

15. The mechanism for the payment of the service charge is found in the Fourth Schedule. It is fairly conventional, in that the leaseholders are to pay by half yearly instalments the estimated amount of the service charge in advance. At the end of the service charge year (30th September), the Company is to provide a statement of the service charge costs for the year, provide a statement of the reserve fund, and provide for the collection of or crediting of any under or overpayment.

The Applicant's submissions

16. The Applicant has been administering the management at Royal Court since 18th November 2011. Shortly after taking over, the Applicant started to receive calls from residents concerning 'banging' noises from the roof when the weather was windy. Following a survey by a roofing contractor a meeting was arranged with the developer, with a view to the developer attending to the problems under the ten year warranty. However, the Applicant was informed that the developer was no longer trading and as it was outside the two year warranty the developer had no further responsibility and accordingly the only avenue was to proceed via the NHBC 10 year warranty.
17. Following a number of contacts and emails with the NHBC, it became apparent that the NHBC, under its 'Buildmark' policy covers the cost of putting right actual physical damage cause by a building defect in the areas of the 'home' defined in the policy booklet. However, some repairs had been carried out to the roof before the claim was investigated by the NHBC, and these items were excluded from cover.
18. In the event the NHBC undertook responsibility for part of the work and commenced operations. Scaffolding was in place for this work. However, it became apparent that two flats were experiencing water ingress when it rained, and that the NHBC were not prepared to carry out work to the flat part of the roof, or to be responsible for the parts of the roof upon which repairs had been previously attempted. The upshot was that the Applicant was faced with appointing a contractor to carry out the works not covered by the NHBC, but would be able to use the scaffold already in place for the work, which had a considerable cost saving against starting again when the NHBC had finished and removed the scaffolding.
19. The Applicant called meetings with the residents on 26th September 2013 and 17th October 2013. At the meeting on 26th September 2013, two representatives from McCane construction, the NHBC contractor were present. They explained to the meeting what works were being carried out by the NHBC and what was required to bring the roof to an acceptable standard. The membrane currently in place had several 'spongy' areas and there was evidence of substandard work in previous repairs. Mr Barron explained to the meeting that the area above apartment 30 had suffered from water ingress after the snow melt, and problems were expected in the future. The only repairs carried out by the Applicant were temporary emergency repairs above apartments 35 and 36, and in the gulleys around apartment 34. These were authorised and paid for by the NHBC. All the other repairs were carried out before the Applicant took over.
20. Questions were asked of the contractors at the meeting:
 - (1) Why would the roof fail after such a short time? The contractors said that this was possibly poor workmanship or an inferior membrane. It was difficult to say.

23. Following the meeting the works were authorised. After the initial costing the NHBC was contacted again and it agreed to be responsible for part of the perimeter metal flashing. The NHBC also paid for the extra scaffold time, so the final amount was £14,500 plus VAT (i.e. a total of £17,100), which the Applicant was able to fund from the reserves, so that, in the event, no further cash contribution was required from the leaseholders at that time.
24. Mr Pollard emphasised to the Tribunal that the Applicant considered that speed was essential. Many of the residents are elderly and it was important the work was carried out before the winter. The Applicant was aware that there was a proper consultation process but considered that the works were sufficiently urgent (particularly bearing in mind the scaffold situation) that it would not be proper to go through the statutory procedure, and that an application for dispensation would be made as soon as possible. On being questioned by the Tribunal Mr Pollard confirmed that the work was completed by mid November 2013, and that the authorisation for it was made before the Application to the Tribunal, which was on 1st November 2014. The Applicant was not aware that the Tribunal, if asked, would have dealt with a protective application on an emergency basis.
25. Several of the Respondent leaseholders spoke at the Hearing. It was made plain that they were concerned for the health and safety of some of the elderly residents who were affected, and for that reason the Respondents present supported the Applicant in its efforts to find a speedy remedy, and signed the authority letter at the meeting on 17th October 2013. However, it was also made plain that the Respondents present felt strongly that they ought not to have to pay themselves for defects in a newly built block and wished the Applicant to actively pursue the option of legal action against the developer.

The Tribunal's Determination

26. The only substantive objections to the grant of dispensation by the Tribunal are those contained in the letter from Irwin Mitchell dated 19th December 2013. The remaining Respondents have either not made any submissions, or, as set out in paragraph 25. are supportive in principal of the Application. However, the Respondents represented by Irwin Mitchell have played no further part in the proceedings. They did not make an application under section 27A of the Act, and have not indicated why they did not do so, nor have they made any further written submissions. They did not indicate whether they intended to attend the Hearing or not and have not complied with the Tribunal's Directions dated 6th December 2013, which required a statement to be submitted setting out why the Application was opposed, and a bundle prepared and submitted containing copies of documents intended to be relied up at the Hearing.
27. The letter from Irwin Mitchell claims that, if dispensation is granted, the Respondents represented by them will suffer prejudice. The prejudice identified in the letter is said to be the lack of opportunity to make representations, and to query the necessity of the works. It is also said that these Respondents are caused particular prejudice because between them they own 8 Flats, which is more than 20% of the total.

Tribunal) (Property Chamber) Rules 2013.

Judge W.J. Martin - Chairman.

Schedule of Respondents

Flat 1	Mr and Mrs Bateman
Flats 2, 29, 35	Jaguar Estates Investments Limited
Flat 3	Mr P Herbert
Flats 4, 16, 22, 31, 33	Barnes Green Investments Limited
Flat 5	Mr D East
Flat 6	Mrs S Brown
Flat 7	Mr and Mrs Kitchener
Flat 8	Mrs Atherton
Flat 9	Mrs S Smith
Flat 10	Mrs L Simpson
Flat 11	Executors of Mrs Wood deceased
Flat 12	Mrs Wood
Flat 14	Mrs Burke
Flat 15	Mr and Mrs Jackson
Flat 17	Mr Bedford
Flat 18	Rev. M Pengelly
Flat 19	Mr and Mrs Haydock
Flat 20	Mrs Savage and Mrs Matthews
Flat 21	Mr and Mrs Jones
Flat 23	Mr N Isshak
Flat 24	Mr Marsden
Flat 25	Mr Warnes
Flat 26	Mrs Sharpe
Flat 27	Mr Barnes
Flat 28	Mr Waring
Flat 30	Mr Froggatt
Flat 32	Mrs Wickens
Flat 34	Mr and Mrs Boulding
Flat 36	Mr and Mrs Isaacs
Flat 37	Mrs Backhouse
Flat 38	Mr James
Flat 39	Mr Wisbey
Flat 40	Mr and Mrs Gabbitas