

10348



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

Case reference : **CAM/OOMB/LDC/2014/0023**

Property : **22A –D and 24 A –D, Craven Road,
Newbury Berkshire RG14 5NE**

Applicant : **22/24 Craven Road Management
Co. Ltd.**

Representative : **Mr C Rex of Jones Robinson –
managing agents and Mr J
Robinson (flat 22D) and director of
the Applicant Company**

Respondent : **Various Leaseholders at 22 – 24
Craven Road, Newbury**

Representative : **None**

Type of application : **To dispense with the requirement
to consult lessees about major
works (s20ZA Landlord and Tenant
Act 1985)**

Tribunal members : **Tribunal Judge Dutton
Mr D Barnden MRICS**

**Decision venue and
date** : **20th November 2014 at Newbury
Magistrates Court, Mill Lane
Newbury**

Date of Decision : **21st November 2014**

DECISION

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Having considered the papers, inspected the premises at 22 – 24 Craven Road, Newbury (the Premises) and heard from Mr Rex and Mr Robinson at the hearing we are satisfied that it is reasonable to grant dispensation from the consultation requirements set out at section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the Service Charge (Consultation requirements)(England) Regulations 2003. This dispensation does not preclude the Respondents, or any one of them, challenging the reasonableness of the works as provided for at sections 19 and 27A of the Act.

BACKGROUND

1. By an application dated 24th October 2014 22/24 Craven Road Management Company Limited, the Applicant, through its agent Jones Robinson sought dispensation from the consultation requirements under s20 of the Act, pursuant to s20ZA..
2. The Application gives the following explanation as to why dispensation from the consultation process is sought: *“The qualifying works relate to two flat roofs to the rear of Craven Road that are leaking. These are at the top, to the rear of the building above 22D and at the ground floor, again at the rear, above 22B. It has also been found that the steel walkways to the rear are perforated in place. It is understood that the steels are safe but it is recommended that sections are replaced when roofing works are undertaken. The flat roofs in these areas have been repaired previously and are now at the end of their useful life. We have no alternative but to replace these two roofs as set out in the leaseholders letter attached. Works have not started, although independent contractors have confirmed that they can commence works within no more than a week or two of the Tribunal agreeing to the dispensation”*
3. The application went to on confirm that the eight leaseholders had been contacted by way of a standard letting setting out the details of the estimates obtained and asking them to confirm they did not object. Seven had responded by returning the letter with their consent endorsed thereon. Neither the freeholder, nor the other leaseholder who had not responded despite having, we were told the letter and delivered and emailed, had objected to the proposed route of seeking dispensation
4. In a bundle provided there was a copy of the directions issued on 6th November 2014, a copy sample lease, copies of the letters sent to the leaseholders and a copy of the letter dated 24th October 2014 from Jones Robinson which accompanied the application. The letter dated 25th July 2014 to the Leaseholders records that those leaseholders who signed and returned same accepted that dispensation was appropriate, that the Tribunal application fee would be split between each leaseholder, set out details of the proposed works and estimates from Newbury Roofing (£4956) and S & S Roofing (£2790) and that two others had been approached. It also confirmed with the leaseholder that they were not precluded from

challenging the standard of the works and that there were sufficient funds held on account to cover the costs of S & S Roofing, who were the preferred contractor.

INSPECTION

5. 22 -24 Craven Road, Newbury, consists of two Victorian terraced houses, built around 1900, and more recently converted into flats. The front ground floor flats in each building, flats 22A and 24A, have access from Craven Road. The remaining flats are accessed from a yard area at the rear. Flats on the upper floors are accessed by external steel staircases.
6. Generally the properties are in a good state of external repair. The properties are constructed from brick. The roof construction is partially a pitched slate roof and part flat felt roofing. The properties have timber doors and windows, some of which have been replaced with UPVC. Two sections of the flat roof are leaking, and require replacement.
7. At the inspection the roofing contractor provided a ladder, to gain access to the defective areas of flat roof, which were clearly in need of attention. Access was given to the interior of flat 22D, where evidence of leaks was clearly visible on the bedroom ceiling. We were unable to access the interior of flat 24C, which is also reported to experience leaks.
8. The Tribunal were also shown defective flashings to a parapet wall, and defective areas of metal decking on the external landings. Replacement of both these elements is included in the proposed works.

HEARING

9. At the hearing held at Newbury Magistrates Court, after the inspection, we heard from Mr Rex and Mr Robinson. We were told that Jones Robinson and Mr Rex wearing another hat, had used S & S Roofing in the past and were very happy with their performance and costings. Mr Rex was also satisfied that the lack of scaffolding did not cause him concern as the flat roofs in question were either above a ground floor extension or adjacent to other flat roofs. He confirmed that flats 22D and 24B were the ones directly affected. During the works there would be interference with access to flat 24C, but this could be avoided by the use of the existing metal frame to the walk ways and the provision of temporary walkways (scaffolding planks) whilst the metal work was replaced, which should not take a great deal of time. We were told that there was the sum of £5,033.26 held to cover these works and that if dispensation was granted the works could commence in a week or so.

THE LAW

Landlord and Tenant Act 1985 (as amended) **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, 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.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

FINDINGS

10. At the inspection we were able to clarify two matters with the contractor. The first was that he did not consider scaffolding would be required as

access could be had by the metal staircase and ladder. The second was that he would be providing a 10 year insurance backed guarantee for the works

11. In reaching our decision we have borne in the mind the relevant provisions of the Act and the Supreme Court decision in *Daejan v Benson*. It appears clear from the papers before us, our inspection and the hearing that urgent attention is required to the two roofs. Our internal inspection of Mr Robinson's flat showed water stains to the ceiling of his bedroom, which sat below the offending flat roof at third floor level.
12. The repairing covenants, for which the Applicant has responsibility, include the maintenance of the structure of the Building as defined in the lease, which includes the roof
13. We are satisfied from the papers before us that the Respondents have been informed of the cost and would be aware of the need as a result of the letter dated 25th July 2014. No Respondent has objected and none have put forward any evidence of prejudice caused to them by dispensation being granted. Accordingly we will grant dispensation under the provisions of s20ZA of the Act in respect of the consultation requirements for the works envisaged under the S & S Roofing quote in the sum of £2,790 including VAT. This does include a provisional sum for the replacement walkways of £475 plus VAT, which may be slightly more or slightly less. Certainly our inspection indicated that the metal was, in places, worn with small holes appearing and needed attention. There is also an additional sum suggested to relaunch a chimney and refit an aerial of £160 plus VAT, which for the avoidance of doubt we would include in the dispensation although there is some suggestion that the aerial is no longer in use and could be removed.
14. It should be noted however, that such dispensation does not remove the need for the Applicant to satisfy the provisions of section 19 of the Act as to the reasonableness of the works, in particular the standard and the costs. Any Respondent unhappy with those elements has the protection afforded them by s27A of the Act.

Andrew Dutton

Tribunal Judge Andrew Dutton

21st November 2014.