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

**Case Reference** : BIR/00CN/LDC/2014/0002

**Property** : 370-388 Gravelly Lane  
Erdington  
Birmingham  
West Midlands  
B23 5SB

**Applicant** : Birmingham City Council

**Respondents** : Ms Y Modiri  
Mr S Nelson  
Miss N Scott  
Miss N Darrow  
Mr M Rooke  
Mr L Montgomery  
Mr and Mrs Murchington  
Mr and Mrs Cole

**Representative** : Mr I Ali for the Applicant

**Type of Application** : Section 20ZA Landlord and Tenant Act  
1985

**Tribunal Members** : Judge T N Jackson BA Law (Hons)  
Mr D Satchwell FRICS

**Date of Inspection** : 23 April 2014

**Date of Hearing** : 24 June 2014

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**DECISION**

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## **Background**

1. This is a decision on an application made to the Tribunal by Birmingham City Council, the freeholder of the flats at 370-388 Gravelly Lane, Erdington, Birmingham, West Midlands, B23 5SB, ("the subject properties"). The application, dated 28<sup>th</sup> January 2014 and received by the Tribunal on 19<sup>th</sup> February 2014, is under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for a determination to dispense with the consultation requirements for proposed qualifying works provided for in section 20 of the 1985 Act. The Respondents are the leaseholders of the subject properties.
2. The Applicant wrote to the Respondents on 29 January 2014 setting out the Notice of Intention to do works, namely replacement of the roofing felt to the main flat roof covering the block. The Applicant stated that such was the condition of the roof that it was leaking into the block during times of rainfall, which was causing damage to the structure and common areas below but also affecting some of the flats in which residents live. The Applicant gave notice to the Respondents that it intended to apply to the Tribunal for a dispensation from the usual statutory consultation requirements.
3. The Applicant therefore made the present application to seek a determination to dispense with the consultation requirements. The Tribunal notified all Respondents of the application and subsequently, on 24<sup>th</sup> March 2014, all parties were notified of the hearing date of 23<sup>rd</sup> April 2014.

## **Inspection**

4. The Tribunal inspected the property on 23<sup>rd</sup> April 2014 in the presence of Miss Scott, a Respondent. The flats are contained within a purpose built medium rise block containing ten one and two bedroomed flats over 3 floors. The development is of traditional brick construction being surmounted partly with a pitched roof and partly a flat roof. The development is situated in a predominantly residential area approximately 6 miles to the north east of Birmingham City Centre. The area offers adequate facilities for local services. The Tribunal noted extensive water damage to the ceilings of the common areas of all floors with subsequent damp and damage to the carpeting on each floor resulting from a leak in the roof and substantial water ingress.

## **The Hearing**

5. The Applicant's representative failed to attend the hearing. Enquiries were made and the Tribunal was advised that he was on leave and no other officer could attend. Miss Scott, a Respondent attended the hearing.

6. The hearing was adjourned and Directions dated 30<sup>th</sup> April 2014 were issued including requirements for further documentation and written submissions as to why the Tribunal should not award costs against the Applicant for the costs arising from the non -attendance of the Applicant's representative.
7. The hearing was rearranged for 24<sup>th</sup> June 2014. Due to an administrative error, it appears that the Applicant may not have been notified of the new date. Enquiries were made and the Applicant's representative was able to attend the hearing at very short notice for which the Tribunal records its appreciation. Mr Cole, a Respondent, also attended the hearing.

### **Applicant's submissions**

8. Mr Ali stated that there had been some temporary and patch repairs to the roof in 2012, 2013 and 2014 and provided a schedule showing such works. He stated that other works not on the schedule may also have been done to the roof.
9. The schedule showed water leakage on 20<sup>th</sup> September 2012, and 3<sup>rd</sup> October 2012. Work had been done to internal walls on 25<sup>th</sup> October 2012 arising from the water leaks. There had been a leak on 23<sup>rd</sup> July 2013 where water had entered the electrics. On 29<sup>th</sup> July 2013 work had been carried out on the blocked gullies on the roof of the communal areas .On 14<sup>th</sup> January 2014 there was further work done to the leaking roof affecting flat 376.
10. On 24<sup>th</sup> January 2014, further ad hoc repairs had been carried out to stop water further damaging the communal areas, residents' flats and the main roof structure. There had been rain water ponding on the main roof, to a depth of approximately 11 inches and that water then leaked inside the main building. If the major works the subject of the dispensation request had not been carried out as a matter of urgency, Mr Ali stated that the cost of repairs would be much higher and there was a strong possibility of the main roof structure being damaged. A dispensation was required to allow the works to be carried out as soon as possible due to heavy rain and the damage it had caused and possible further damage to communal areas, resident's homes and the main roof structure.
11. Mr Ali was unable to explain the details of the actual work ,the subject of the dispensation request, that had been done to the roof to repair it, other than that he thought it had been completely asphalted. He was not aware of whether insulation had been included as required by current building standards as this area of work was carried out in a different section of the Department. Mr Ali was unable to advise whether there was a planned maintenance programme regarding the roof; whether repairs were carried out on a proactive or reactive basis or whether one officer had responsibility for maintenance of the block regardless of the mixed tenure of owner occupiers and tenants. Mr Ali

was also unable to assist the Tribunal regarding whether there was consistent treatment in the response to calls for repairs regardless of whether they came from owner occupiers or tenants, as it appeared on the evidence given that different sections of the Council dealt with the different tenures.

12. Mr Ali was also unable to advise as to whether the gullies on the roof were cleaned regularly, although there had been gully cleansing on 29<sup>th</sup> July 2013 following water leaking from the roof as a result of blocked gullies.

### **Respondent's submissions**

13. Mr Cole gave evidence that he had bought 376 Gravelly Lane in January 2013. He had serious concerns regarding the competence of the Applicant as a Landlord. He confirmed there had been a huge water leak in July 2013 where the fire services had to be called. The majority of the damage was to the common areas on the ground and first floor but there was also some damage to the top floor.
14. He was not aware of any gully cleaning having been done as the Applicant had advised him that such work would require scaffolding and no scaffolding had been erected since he had owned the property.
15. He gave evidence that he received a letter from the Applicant dated 7<sup>th</sup> January 2014 advising that scaffolding was to be erected on Wednesday (ie 8<sup>th</sup> January 2014) as it was proposed to completely recover the roof area above the communal stairway and adjacent flats. As water appeared to be running across the communal ceiling and through the smoke alarm into Mr Cole's entrance hall, the letter advised that the contractors would try to cut out a piece of the communal hallway ceiling to stop water tracking into his flat.
16. The work was completed on 24 January 2014 although Mr Cole did not know the details of the work carried out.
17. Mr Cole's view was that it shouldn't have come as a surprise to the Applicant that major works needed doing to the roof as it was clear in July 2013 that there were problems and that if regular maintenance had been carried out, that might have affected the extent of works that were ultimately required to be done.
18. Mr Cole accepted that there was an urgent need for the roof works to be done and that the Respondents wanted the work to be done as soon as possible. He stated that he had not suffered any loss or prejudice as a result of the non-consultation.

### **The Law**

19. The only issue for determination is whether the Tribunal should dispense with consultation requirements.

20. In accordance with section 20ZA (1) of the 1985 Act, the Tribunal may dispense with the consultation requirements "if it is satisfied it is reasonable to do so".

21. It is important to note that the present application is concerned only with the issue of whether it is reasonable to dispense with the consultation requirements so that in principle, the Applicant can recover from the Respondents the full costs of the works to the roof. A determination by the Tribunal that the consultation requirements should be dispensed with does not preclude an application under section 27A of the 1985 Act to determine whether the relevant contribution is payable at all or whether the relevant contribution is reasonable.

### **Costs**

22. Mr Ali made a verbal submission as to why the Council should not pay Miss Scott's costs of £54.20 for attending the hearing of 23<sup>rd</sup> April 2014 when the Applicant failed to send a representative. He submitted that the failure to attend was due to unforeseen circumstances as he was on leave from 7<sup>th</sup> April 2014 to 1<sup>st</sup> May 2014 and his manager, who would have covered, was either on leave or on long term sick and that there were no other Council officers who could attend.

### **Decision**

#### **Dispensation**

23. The Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in the circumstances of the present case, for the following reasons:

- i. The power to dispense with the consultation requirements was included in the 1985 Act primarily to provide for circumstances where urgent action is required.
- ii. In the circumstances of the present case, the proposed works were urgent as the repairs to the roof were necessary to prevent rain ingress and further damage caused by rain ingress.
- iii. Mr Cole gave evidence that the Respondents wanted the work done as a matter of urgency to prevent further water penetration. He confirmed that he had not been prejudiced or suffered any loss or opportunity as a result of a failure to comply with the full consultation requirements.

24. The Tribunal therefore determines that the consultation requirements are dispensed with in relation to the works to the roof, **such dispensation to be on condition that the costs of this**

**application are not included in the service charges**, due to the ratio of owner/occupiers and Council tenants.

### **Costs**

25. The Tribunal is not persuaded by the Applicant's submission. The Applicant was notified of the date of the hearing on 24<sup>th</sup> March 2014. An officer taking a month's leave cannot be said to fall within unforeseen circumstances and the appropriate action to have taken, if no other officer was available, was to seek an adjournment prior to the hearing date. No such adjournment was sought resulting in the attendance on the hearing date of Miss Scott, who had taken a day's leave to attend, and the Tribunal's resources being wasted.
26. The Tribunal determines that the Applicant acted unreasonably, and under Rule 13 (1) (b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, determines that the Applicant pay directly to Miss Scott costs of £54.20 within 28 days of the date of this decision.

### **Appeal**

27. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

Judge T N Jackson

Date 17 JUL 2014