



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

Case Reference : **BIR/37UG/LDC/2014/0003**

Property : **The Old Chapel Lovers Lane Newark
Nottinghamshire NG24 1HU**

Applicant : **MB Freeholds Limited**

Representative : **Ms Diane Taylor of RMG Limited
(Managing Agents)**

Respondents : **8 leaseholders as set out in the Schedule**

Representative : **Mr Graham Smith (Flat 5) in person**

Type of Application : **An application for the dispensation of
the consultation requirements as
provided for by section 20ZA of the
Landlord and Tenant Act 1985**

Tribunal Members : **Judge Roger Healey (Chairman) Mr
Colin Gell FRICS & Mr Derek Douglas**

Date and venue of **Nottingham Magistrates' Court Carrington
Street Nottingham NG2 1EE on 13 March 2014**

Date of Order : **17 MAR 2014**

DECISION

Decisions of the Tribunal

- (1) The Tribunal grants the application for dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”).
- (2) The Tribunal makes an order under section 20C of the Act so that none of the landlord’s costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The Application

1. RMG Limited as managing agents to MB Freeholds Limited seeks dispensation from the requirement to consult with the lessees regarding work to be undertaken at The Old Chapel Lovers Lane Newark Nottinghamshire (“the Building”).
2. The Application was received by the Tribunal on 3 March 2014. Copies of the application which includes the grounds for seeking the dispensation were posted to the Respondents by the Applicant on 4 March 2014. The individual Respondents names against their flat number are set out in the Schedule.

The relevant legal provisions

3. Section 20(3) of the Act and Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) provides that where the qualifying works on a building or any other premises result in a contribution in excess of £250 being payable by any one tenant, the landlord is required to consult with the tenants in accordance with the procedure laid down therein. The term “qualifying works” are defined in section 20ZA(2) of the Act.
4. Section 20(1) of the Act provides that where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either complied with or dispensed with.
5. Section 20(1)(b) of the Act gives the Tribunal power to dispense with the consultation requirements.
6. Section 20ZA(1) of the Act provides that where an application is made to a Tribunal for a determination to dispense with all or any of the consultation requirements the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Inspection

7. The Tribunal Members inspected the Building on 13 March 2014 in the presence of Ms Diane Taylor of the Managing Agents and Mr Graham Smith of Flat 5.
8. The Building comprises a former chapel of brick and slate construction with some lighter coloured brick ornamentation and now converted to eight flats.

9. On the main ridge of the roof when viewed from Lovers Lane the Tribunal observed two areas of missing slates creating holes in the roof and a number of further slates over that elevation either absent or slipped. The opposing main ridge also revealed a hole and further missing and slipped slates.

10. The main ridge of the roof appeared to have two vents; the cover of one appeared alongside the vent.

11. Notices were affixed to the Building which read "Danger. Loose or falling slates. Keep away."

12. Internally the Members observed evidence of water ingress to Flat 5 at the top of the stairs. The Members looked into the roof space and saw further evidence of water ingress.

The Hearing

13. Ms Diane Taylor of the Managing Agents appeared on behalf of the Applicant. Mr Graham of Flat 5 also attended.

14. Ms Taylor produced a copy specimen lease. The Lease provides for the Applicant to be responsible for (inter alia) keeping the roof in a good and substantial state of repair and complying with statutory notices. The expenditure forms part of the service charge and each Respondent covenants to pay the appropriate proportion.

15. The Applicant acquired the freehold reversion in December 2013 and the Managing Agents were appointed in January 2014. The Notice affixed to the exterior was present when the present Managing Agents were appointed as were the holes in the roof and the slipping slates.

16. An insurance claim in respect of the damage was rejected by both the Applicant's insurers and its predecessors insurers.

17. The local authority were notified of the perceived danger of falling slates which culminated in Newark and Sherwood Council on 13 February 2014 serving a Notice of Dangerous Building or Structure pursuant to the Building Act 1984 section 77 which requires the Applicant to execute such works as are necessary to obviate the danger by 13 March 2014. By email dated 5 March 2014 the time for compliance is extended to 21 March 2014.

18. By letter dated 28 February 2014 the Managing Agent served each of the Respondents with a Notice of Intent outlining the required roof repairs. The Respondents were invited to nominate contractors who should be invited to quote for the works no later than 3 April 2014. As at the hearing date no such nominations had been received.

19. The leaseholders of flats 1, 5 and 6 consent in writing to the application for dispensation. Mr Mark Frost of Flat 3 has consented verbally to the Applicant.

20. No specification of works was produced for utilisation as a tender document.

21. Three tenders are before the Tribunal. The lowest tender is from Artez Limited in the sum of £58,715.40, the next from Rescom Limited for £61,434.45 and the third from EBM Ltd in the sum of £79,998 in each case plus VAT.

22. The tender from Rescom Limited in the sum of £61,434.45 plus VAT is the one included in the Application lodged with the Tribunal and copied to the Respondents. It is recommended for acceptance by Ms Taylor as the Managing Agents have a good working relationship with that company and their past work on other projects has been found to be acceptable. Rescom has also been on site to inspect the Building prior to submission of its tender. The tender also includes an upgrade to the roof insulation which is said to be required by current building regulations.

23. The service charge accounts to the year end 31 December 2012 are in deficit. The landlord has offered to lend monies to the service charge account to fund the works.

24. Mr Graham Smith did not wish to question Ms Diane Taylor.

25. Mr Smith was questioned by the Chairman. Mr Smith gave evidence that he considered the proposed price to be reasonable. He had expected a higher figure. He did not think the works could properly be undertaken more cheaply. He was not aware of any other works than should be undertaken alongside the roofing works nor did he see any modifications that ought to be considered. He does not require independent advice on the scope and cost of the repairs. He does not consider that any financial prejudice is being suffered by failure to consult.

Findings by the Tribunal

26. The roof appears to have been in a state of disrepair for some time. There is ingress of water into the residential accommodation of Flat 5.

27. Loose slates on the roof appear to be at risk of slipping and causing danger to pedestrians. Pedestrians are notified of the danger by notices affixed to the wall by predecessors of the present Managing Agents.

28. There exists urgent need to repair the roof.

29. The urgency is confirmed by the service by Newark and Sherwood and District Council of the Dangerous Building or Structure Notice.

30. There are no known objections by any of the Respondents to the granting of a dispensation.

31. The Tribunal finds that due to the long standing nature of the disrepair it is not reasonable for the Respondents to bear the costs of a dispensation application.

32. The Tribunal finds no evidence of financial prejudice or disadvantage to the Respondents arising out of the failure to consult.

Determination

33. The Tribunal grants a dispensation of the consultation requirements provided for by section 20 of the Act in respect of the tender by Rescom dated 28 January 2014 relating to their “roof quote”

34. The Tribunal determines that due to the long standing disrepair it is unreasonable for the Respondents to be charged with the costs relating to the present dispensation application. It therefore determines it to be just and equitable in the circumstances for an order to be made under section 20C of the Act, so that the Applicant may not pass on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

35. The parties should note that this determination does not prevent any later challenge by the Respondents, or the individual leaseholders, under sections 19 and 27(A) of the Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works were not carried out to a reasonable standard.

The Schedule

(List of leaseholders)

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|-----------------------------|------------------|
| Mr C Cavener | 1 The Old Chapel |
| Mr G Harvey | 2 The Old Chapel |
| Mr M Frost | 3 The Old Chapel |
| Mr D & Mrs E Instone-Brewer | 4 The Old Chapel |
| Mr Graham Smith | 5 The Old Chapel |
| Mr R Coutin | 6 The Old Chapel |
| Mrs B Cuff | 7 The Old Chapel |
| Mr B & Mrs N Ashenden | 8 The Old Chapel |

Roger Healey
(Chairman)

17 MAR 2014