



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/38UB/LDC/2019/0002
Property	:	Stratton Audley Manor Mill Rd Stratton Audley Bicester OX27 9AR
Applicant	:	Stratton Audley Manor House (Management) Ltd
Respondent	:	the long leaseholders listed in the application
Date of Application	:	8th January 2019 (rec'd 10th)
Type of Application	:	for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act")) as amended
Tribunal	:	Mary Hardman FRICS IRRV (Hons) Bruce Edgington (lawyer)

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of dismantling the south west turret wall on the Old Manor, replacing the supporting beam with new and rebuilding the wall as existing.

Statement of Reasons

2. This is an application for dispensation from further consultation requirements in respect of 'qualifying works' as set out in the decision above.
3. The Tribunal issued a directions order on the 10th January 2019 timetabling this case to its conclusion. The Tribunal indicated that it would deal with the application on the basis of written representations on or after 8th February 2019 with a proviso that if anyone wanted an oral hearing, then arrangements would be made for this. Similarly, the Tribunal did not consider than an

inspection would be necessary but offered the facility of an inspection. No request was made for either an inspection or an oral hearing.

4. The applicant states that the turret of the Grade 2 listed Manor House, containing 12 apartment conversions over 3 floors has failed structurally and damage to the building is increasing incrementally and that urgent repairs are required
5. The works to be completed have been issued to tender twice with the tender processes completed in 2018. On both occasions no one company was prepared to act as the principal contractor and provide an all-encompassing return of tender. A firm of surveyors (Michael Aubrey Partnership) has agreed to act as principal contractor using a partial return from a roofing contractor (M Foster Roofing) combined with other work being sourced from other contractors. Given the management company has only one tender they are seeking to enter into a second round of consultation.
6. However, the Applicant believes that the urgency of the work required is such that it needs to apply to dispense with the subsequent consultation requirements as set out in Section 20 of the 1985 Act.
7. The Applicant has confirmed that they have complied with para (1) of the directions order issued on 10th January and have served the required documents on the leaseholders on 11th January 2019, informing them of the intention to apply for dispensation under section 20ZA.
8. The Respondents were directed to make any representations about the application by 25th January 2019, indicating whether they considered that they would be prejudiced by dispensation being granted. No such representations have been received.

The Law

9. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works involving a cost of more than £250 to each tenant unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. At least 2 tenders should be obtained.
10. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then must be given in writing to each tenant and to any recognised tenant's association. Again, there is a duty to have regard to observations in relation to the proposal and the landlord must give its response to those observations.
11. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to

dispense with any of the consultation requirements if it is satisfied that it is reasonable so to do.

Conclusions

- 12. All the Tribunal must determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this sort of case which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
- 13. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may be suffered by the lessees as a result of the lack of consultation.
- 14. The evidence clearly shows that this work is needed, that there has been at least one meeting with the long leaseholders, and that the application to dispense with the full consultation requirements is due to inevitable delay caused by insufficient tender bids with possible breach of the regulations as a result.
- 15. The Tribunal grants dispensation on the grounds that no prejudice is likely to be suffered by the Respondents as a result of proceeding with the relevant works without prior consultation under section 20. Indeed, any delay could be prejudicial in view of the seriousness of the structural problems as set out in the papers submitted.
- 16. However, the Tribunal makes it clear that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the 1985 Act. Nevertheless, if any tenant then wants to challenge the cost of this work, he or she will have to provide some clear evidence that the work could have been done better or more cheaply on reasonable enquiry within the time frame open to the Applicant

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Mary Hardman FRICS IRRV(Hons)
8th February 2019

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.