FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HX/LDC/2019/0051
Property	**:**	Flats 36-46 Luna Close, Swindon, Wiltshire SN25 2LZ
Applicant	**:**	Sovereign Housing Association Limited
Representative	**:**	
Respondent	**:**	D Thomson (44)
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	**:**	Mr D Banfield FRICS
Date of Decision	**:**	1 August 2019

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.

2. The Applicant explains that emergency remedial works to the roof were carried out on 30 April 2019 following a report on 22 March 2019 that the condition of the roof was a health and safety issue.

3. Paragraph 9 of the Grounds of Application erroneously referred to "emergency works to the car park" whereas the remainder of the document correctly referred to roof works. The Tribunal's Directions referred to roof works only and I am satisfied that Respondents were not prejudiced by the error. An amended application form was received on 23 July 2019

4. The Tribunal made Directions on 26 June 2019 requiring the Applicant to send a copy of the application and the Tribunal's Directions to each lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.

5. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents

6. Two replies were received one agreeing and one objecting to the proposal. All lessees except the objector have been removed as Respondents as previously indicated.

7. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.

8. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

9. The relevant section of the Act reads as follows:

   20ZA Consultation requirements:
   a. (1) Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

10. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following

    b. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
    c. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
    d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
    e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
    f. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
    g. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
    h. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
    i. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
    j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

11. The grounds of the application are set out in paragraph 2 above. From a quotation by Snape Contracting dated 22 July 2019 it appears that the work comprised the erection of scaffolding to the front corner and rear elevations following which the dry-ridge ridge system which had failed was re-laid on mortar with mechanical ties. Verges also required re-pointing and there were some damaged, slipped or missing slates requiring replacement.

12. Photographs of the roof prior to the works were included in the bundle.

13. In a letter dated 9 July 2019 the leaseholder of Flat 44 objects to the application on the grounds that;

- As leaseholder they are not responsible for the maintenance and repair of the building.
- A monthly service charge is paid to cover facilities such as cleaning communal areas, maintenance of grounds and the cost of insurance.
- Insurance should cover works outside routine maintenance.
- Their garage was fenced off from 22 March 2019 and notification was not received until the 23rd. The work was not completed until 30 April 2019 and residents had to find alternative parking for some 5 weeks and 4 days. Due to lack of parking they had to temporarily move.
- The application refers to works to the car park, nothing was done, only work to the roof ridge tiles.

Determination

14. Although this is an application to dispense with the consultation requirements of the Landlord and Tenant Act 1985 and does not concern whether the costs are reasonable or payable in view of the objection received it is first of all necessary to determine whether such works may be chargeable to the service charge.

    - Clause 3.1 of the lease requires the lessee to pay the Specified Rent Service Charge and all other monies due.....
    - Clause 7.1 (b) "Specified Proportion" is the amount shown in the (1/11th)
    - Clause 7.5(a) refers to the relevant expenditure which may be charged to the service charge as: - the costs of and incidental to the performance of the Landlord's covenants contained in Clauses 5.2 and 5.3 and 5.4.
    - Clause 5.3 requires the Landlord to maintain repair redecorate renew.....(a) the roof foundations and main structure of the Building.....

15. The lease is unambiguous in requiring the landlord to maintain the roof and for the lessees to pay their proportionate part. As such either consultation is required or dispensation given.

16. From the information provided I am satisfied that it was advisable to take prompt action to prevent the possibility of injury from falling building parts or for other damage to occur. As such it would not have been appropriate to incur the delays which complying with the full consultation procedure would have entailed.

17. With regard to the terms of the objection: -

    - Lessees are obliged to pay a proportion of the cost of such works by way of service charge as specified in their leases in addition to expenditure on cleaning etc.
    - Repairs such as these are not recoverable through insurance.

- Inconvenience caused by the works is not a relevant consideration when determining whether to grant dispensation from consultation.
- The erroneous reference to car park is explained at paragraph 3 above.

18. No prejudice of the type referred to in the Daejan case referred to at paragraph 10 above has been identified and in these circumstances I am satisfied that the dispensation requested should be given.

19. In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for repairs carried out to the roof on 30 April 2019.

20. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

D Banfield FRICS
1 August 2019

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the appeal is seeking.