FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HG/LDC/2020/0042
Property	**:**	Mutley Court, Hill Park Crescent, Plymouth PL4 8JW
Applicant	**:**	Plymouth City Limited
Representative	**:**	Plymouth Block Management
Respondent	**:**	The leaseholders
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	**:**	Judge D. R. Whitney
Date of Directions	**:**	2nd September 2020

DECISION

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 is the freeholder of the Property. The Property consists of 12 residential flats and 5 commercial units. The Application form suggests 9 residential units belong to one company, Volska Limited, with the remaining three residential units each being owned by a separate entity.

3. The Applicant explains that works are required to refurbish the Property which has been neglected. Page 8 of the Application form sets out the works for which dispensation is sought.

4. Directions were issued on 24th July 2020. Those provided for the Applicant to give notice of this Application and send copies of the directions to all residential leaseholders. The Applicant did this by letter dated 4th August 2020 and confirmed this to the Tribunal by email on 6th August 2020.

5. No responses have been received from any leaseholder.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give

practical effect to those two objectives and were "a means to an end, not an end in themselves".

10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

11. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

> "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with."

12. If dispensation is granted, that may be on terms.

13. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

14. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

15. The effect of Daejan has very recently been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC) although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

Determination

16. The Tribunal in making its determination has had regard to the Application form submitted dated 18th June 2020, the attachments and the directions. No further submissions were received from any other party including the leaseholders.

17. The Application form at page 8 sets out the works which it is proposed to undertake. These appear to be works to the masonry and render to the front elevation. I am told that the works have commenced

and that they are urgent due to masonry falling off the building posing a health and safety risk. Further there is reference to the building only being partially insured due to the general state of neglect of the building. The Application form refers to the Property being affected by significant arrears of service charge and that the Applicant has funded certain works. Little explanation has been given as to what information or communications have been had with the leaseholders and as to why consultation could not have been undertaken.

18. I have been concerned over this lack of complete explanation as to why the works are now required to be undertaken without consultation. Little or no evidence has been supplied in support of the Application and I would normally expect a much fuller explanation, including copies of any and all correspondence, to have been supplied. I am mindful of the fact that no leaseholder has replied to the Application despite notification of the Application having been sent. It is not clear whether the leaseholders agree with the need for the Application or oppose the same.

19. On balance having regard to the law as summarised above I am prepared to grant dispensation for the works as set out in page 8 of the Application form. I reach this decision on the basis that it would appear there are health and safety risks and the fact the Property is not fully insured. On balance these weigh in favour of granting dispensation.

20. I have considered whether or not any conditions should be imposed. In my judgment they should and dispensation is granted conditional upon the Applicant complying with the following:

- The Applicant shall send to all leaseholders within 14 days of receipt of this decision copies of any and all specifications or similar documents prepared for the works and copies of all estimates/tenders received for the works and a brief statement confirming how and why the contractor instructed was chosen.

21. I attach such condition as this information will provide the leaseholders with full information as to the works which have been undertaken for them to satisfy themselves as to the costs incurred and whether the same are reasonable. If a consultation had been undertaken effectively this is the information which would have been provided to the leaseholders. I am satisfied that attaching such condition is not unreasonable to the Applicant as this is all documentation which should be within their care and control.

22. The parties are reminded that in making this decision I have made no findings as to the leaseholders' liability to contribute towards any costs or as to the reasonableness of the same.

RIGHTS OF APPEAL

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.

2. 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.

3. 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.

4. 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 application is seeking