FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/23UB/LDC/2021/0007
Property	:	64-66 High Street, Cheltenham, GL50 1EE
Applicant	:	66 High Street Management Company Limited
Representative	:	Robyn MacDonald HML Group
Respondents	:	Flat 1- Miss Julie Oldroyd Flat 2- Mr Nick Brown Flat 3- Mr Charlie Kiely Flat 4- Ms Lauren Delaney
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge Tildesley OBE
Date and Venue of Hearing	:	Determination on Papers
Date of Decision	:	17 March 2021

DECISION

The Application

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 explained there was currently a leak into the two top floor flats which has got worse with the winter weather. Two contractors have attended and confirmed that the coping stones were causing the water ingress. According to the Applicant, works were required as soon as possible to prevent further water damage being caused to the top floor flats and the flats below. Finally the leaseholders expressed concern that if a section 20 consultation was carried out it would delay the remedial works.

3. The Application for dispensation was received on 20 January 2021.

4. On 4 February 2021 the Tribunal decided that the matter was urgent, it was not practicable for there to be a hearing and it was in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).

5. The Tribunal directed the Applicant to serve the application and directions on the Respondents, and to confirm that it had done that by 10 February 2021. The Applicant failed to do this and the Application was struck out. The Applicant applied for reinstatement of the Application which was granted and fresh directions were issued on 12 February 2021.

6. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 5 March 2021 indicating whether they agreed or disagreed with the Application.

7. On 5 March 2021 the leaseholders of Flats 2, 3 and 4 returned the pro-forma indicating their agreement to the Application.

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Determination

8. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

9. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section

20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

10. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

11. Lord Neuberger in *Daejan* said at paragraph 44

> "Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements".

12. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

13. The Tribunal now turns to the facts. The Tribunal is satisfied that it is necessary to carry out the repairs as an urgent measure to prevent further damage by water ingress to the property. The Tribunal holds that the Applicant could not wait to undertake a full consultation exercise before it carried out repairs. The Tribunal observes that three of the four leaseholders agreed with the Application.

14. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

15. **The Tribunal, therefore, dispenses with the consultation requirements in respect of the works to the coping stones.**

16. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

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 by email to rpsouthern@justice.gov.uk 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.

Due to the Covid 19 pandemic, communications to the Tribunal MUST be made by email to rpsouthern@iustice.gov.uk. All communications must clearly state the Case Number and address of the premises.