FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/23UB/LDC/2021/0104
Property	**:**	17 & 18 Ambrose Street, Cheltenham, Gloucestershire, GL50 3LP
Applicant	**:**	Holding & Management (Solitaire) Limited
Representative	**:**	JB Leitch Limited
Respondent	**:**	The Leaseholders
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 J Dobson
Date of Decision	**:**	22nd December 2021

DECISION

Summary of the Decision

1. **The Applicant is granted 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 in respect of major works, being fire safety works. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The application and the history of the case

2. The Applicant management company applied by application dated 3rd November 2021 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by Section 20 of the Act.

3. The Tribunal gave Directions on 11th November 2021, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.

4. The Directions further stated that Tribunal would determine the application on the papers received and that having considered the application the Tribunal was satisfied unless any objection was received. None has been.

5. This the Decision made on that basis and following a paper determination.

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. 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.

13. 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.

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

15. The Applicant's statement of case makes brief reference to *Daejan,* although it does so making reference to the Court of Appeal in paragraph 22 of that document and then appears, although without saying so, to refer to the decision of the Supreme Court in paragraph 23.

Consideration

16. It is said in the application that 17 Ambrose Street is a purpose- built block of 8 residential flats with main and secondary entrances and a single protected staircase, whereas 18 Ambrose Street is a converted block of 3 residential flats with a single entrance to a common staircase.

17. The Applicant explains that a fire risk assessment was undertaken in March 2021. This identified the fire risk rating- some tolerable and some moderate- of various matters and identified some measures of medium priority. It assessed the likely consequences of fire. The report

listed various works which were required to be undertaken ("the fire safety works").

18. The Applicant states the fire safety works to be urgent and hence seeks dispensation from consultation. The works in question comprise (17) replacement of doors with suitable fire doors, gaps to be fire stopped, attend to areas where there is no ceiling to the ground floor riser to floorboards above and (18) the installation of a Grade A LD2 fire alarm system.

19. The Directions noted that it appears from the application form that quotes were obtained in or about June 2021 and a notice of intention was sent on 6th September 2021 in respect of number 17 Ambrose Street only, providing for a consultation period ending on 11th October 2021. The Directions query that no explanation is given as to why notice of intention was not sent early given the scope of works was previously set out or why there has been delay in making this application until 3rd November 2021 given the quotes were all obtained in June 2021.

20. It appears from the Applicant's statement of case that the works have been undertaken by the cheaper of the two contractors who quoted. It is unclear when that occurred, but it appears later than the service of the Notice of Intention- there would have been little point to such a Notice if the works had already been undertaken. The application form was ticked to indicate that the works had not been undertaken and it is only apparent from reading the statement of case that the form is wrong as to that.

21. I perceive that may have caused some of the concern referred to in the Directions. However, the delay from March 2021 to September 2021 in sending out a Notice of Intention and only in relation to one of the buildings must cause concern in itself. The Applicant's assertion that it has complied with section 20 to the best of its ability is of doubtful accuracy. So too a further two- month delay in making the application, such that it was only submitted some eight months after the fire report, causes some concern.

22. It is not obvious that the Applicant dealt with matters with urgency and it is troubling that the application is presented to the Tribunal as one to be dealt with urgently where the Applicant delayed for such a time in making it. If the matter is properly regarded as urgent, the application ought to have been made sooner.

23. Two sample leases were provided with the application ("the Leases"), one for a flat within 17 Ambrose Street and one for a flat within 18 Ambrose Street and dated 29th June 2004 and 30th June 2004 respectively. The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms.

24. The Leases are tri- partite. The Applicant is the management company, termed "the Company", named in the Leases. Various duties are imposed on the Applicant in that capacity, principally found in the Fifth Schedule to the Leases.

25. Those duties include maintaining and repairing the "Block" and the "Estate". The Applicant is also given the power to collect in the service charges, being the contributions to what is described as the Annual Maintenance Provision.

26. In the event, the Applicant subsequently acquired the freehold, as the Leases provide for, and hence the distinction in the Lease between the freehold owner and the management company are no longer relevant.

27. The relevant works fall within the responsibility of the Applicant.

28. Notwithstanding my above observations about the approach taken by the Applicant, there has been no response from any of the Leaseholders opposing the application. Indeed, the only Leaseholder who has responded agreed to the application.

29. None of the Leaseholders have therefore asserted that any prejudice has been caused to them. The Tribunal finds on that footing that nothing different would be achieved in the event of a full consultation with the Leaseholder s, except for the potential delay and potential problems.

30. Accordingly, the Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

31. The Tribunal does not on balance make a condition of the grant of dispensation that there be limit on the recovery of costs of the application to reflect its above concerns, or that the Tribunal considers the statement of case to be largely unnecessary. However, such costs may be scrutinised in the event of a challenge to the reasonableness of any charges.

32. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building.

33. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs 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 1968 would have to be made.

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.