



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case References** : **MAN/30UL/LDC/2021/0038**

**Property** : **3 Gate Flats, Kirby Lonsdale,  
Lancashire LA6 2BX**

**Applicant** : **South Lakes Housing**

**Respondents** : **Mr Alistair Nicholson**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 20ZA**

**Tribunal Members** : **J A Platt FRICS, FIRPM  
P Mountain**

**Date of Decision** : **27 October 2022**

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**DECISION**

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## **DECISION**

Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the Tribunal makes a determination to dispense with the requirement to consult with the Respondent on the qualifying works to replace facias, soffits and rainwater goods at Gate Flats, Kirkby Lonsdale, for the reasons given below.

## **THE APPLICATION**

1. The application ('the Application') was made on 14 December 2021 by the Applicant. It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by Section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003. Dispensation is sought for the replacement of facias, soffits and rainwater goods ("the Works") at Gate Flats ("the Property"). The Property is a purpose built block of 4 flats. The Respondent is the leaseholder of flat number 3.

## **DIRECTIONS**

2. Directions were issued on 24 June 2022. Both parties have complied with those directions. Neither party requested an oral hearing. This decision is made on the basis of the papers and written submissions received from the parties.

## **THE LAW**

3. Extracts from Sections 20 and 20ZA of the Act are reproduced in Annex A.
4. The Tribunal considers the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*') to be the leading case on dispensation. In *Daejan* Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants.

## **BACKGROUND AND AGREED FACTS**

5. The Applicant commenced consultation under Section 20, in respect of the Works, by sending a Notice of Intention to the Respondent at 6 Queens Square, Kirkby Lonsdale ("the Previous Address") on 19 June 2020.
6. The Respondent notified the Applicant of a change of address to 15 Oakfield Park, Kirkby Lonsdale ("the Current Address") on 11 August 2020. The Applicant acknowledged receipt and confirmed to the Respondent that its records had been updated.
7. The Applicant sent a Statement of Estimates to the Respondent at the Previous Address on 6 November 2020. By that date, the Respondent was living at the Current Address and denies receipt of the Statement of Estimates sent to the Previous Address.

8. The Applicant sent confirmation of appointment of contractor to the Respondent at the Current Address on 17 December 2020, advising that the contract had been placed with Jennings Roofing Ltd and works would start on-site on 4 January 2021.
9. The Applicant wrote to the Respondent at the Current Address seeking payment of outstanding service charges on 11 October 2021. The Respondent avers this is the first time he was aware of any service charges being sought by the Applicant in respect of the Works and the first knowledge he had of the cost of the Works. The Applicant confirmed to the Respondent that the Statement of Estimates and service charge demands for 2021 had both been sent to the Previous Address, due an administrative failure to update its 'leaseholder mailmerge database'.

## **EVIDENCE OF THE PARTIES**

### **The Applicant**

10. The Applicant concurs with the background details above and does not dispute the Statement of Estimates was sent to the wrong address due to an administrative error. It avers that the Respondent was given the Notice of Intention and was hence aware of the proposed works. It also highlights that the contract was placed with the contractor which submitted the lowest estimate. The Applicant avers (within the application, although curiously not within its statement of case) that the Respondent has suffered no relevant prejudice.

### **The Respondent**

11. The Respondent highlights the background chain of events detailed above. He avers that he did not receive the Statement of Estimates and the first he knew of the cost of the Works and / or the sums demanded as service charges from himself was the 'chaser letter' of 11 October 2021.
12. He makes no submissions on how the lack of receipt of the Statement of Estimates has caused any relevant prejudice.

## **DISCUSSION AND DETERMINATION**

13. There Appears to be no dispute between the parties relating to the background events. In summary, the Applicant failed to correctly amend its records which resulted in the Statement of Estimates (and service charge demands for 2021) being sent to the Respondent at the Previous Address. The Applicant does not deny that the Respondent did not receive the Statement of Estimates but seeks dispensation on the grounds that the Respondent has suffered no relevant prejudice as a result of this failing.
14. In accordance with *Daejan*, the Tribunal is concerned with whether the failure of process (which is agreed) has resulted in any relevant prejudice to the Respondent. As Lord Neuberger stated in *Daejan*, the factual burden of identifying some relevant prejudice rests on the tenants i.e. it is for the Respondent to demonstrate that he would have taken some action upon receipt of the Statement of Estimates that would or may have affected the Applicant's decision to place a contract for the Works with Jennings Roofing Ltd in December 2020 and that he has suffered some relevant prejudice by being denied the opportunity to do so. The Respondent has not done so.

15. The Tribunal further notes that the Respondent made no observations and did not nominate any contractor upon receipt of the Notice of Intention. Nor did he make any observations when advised on 17 December 2020 that a contract had been placed for the Works to be commenced 4 January 2021. In accordance with the Upper Tribunal decision *Southall Court (Residents) Ltd v Tiwari* [2011] UKUT 218 (LC), the Tribunal can only conclude from the lack of observations that the Respondent had no serious objections to the proposed works being necessarily undertaken.
16. The Respondent's sole issue appears to be that he was unaware of the cost of the Works and the sum that would subsequently be demanded from him as service charge. This is not disputed by the Applicant.
17. A decision on the issue of dispensation does not concern the issue of whether any costs are contractually or statutorily recoverable as service charge nor whether those costs have been reasonably incurred. Any such decision would be made in respect of an application (by either party) under Section 27A of the Act. It is not for this Tribunal to make any determination in respect of those matters upon which it has not received an application nor submissions from the parties. The Tribunal also notes that the relevant page of the lease relating to calculation of service charges i.e. clause 1(b) of 3<sup>rd</sup> Schedule is missing from the papers.
18. The Tribunal finds as fact that the Respondent did not receive the Statement of Estimates and, although he was aware of the proposed works, he was not aware of the cost of the Works. The Tribunal finds that the Respondent has suffered no relevant prejudice due to this failure.
19. In the circumstances, the tribunal considers it reasonable to dispense with the consultation requirements to the extent they were not complied with. Accordingly, the tribunal makes a determination under section 20ZA of the Act to dispense with the requirement to consult with the Respondent under Section 20, in relation to the Works at the Property.

**J A Platt**  
Chairman  
27 October 2022

## **Annex A**

### **Landlord and Tenant Act 1985**

#### Section 20

(Subsections (1) and (2):)

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

#### Section 20ZA

(Subsection (1))

(1) Where an application is made to a 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.