



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

Case Reference	: MAN/30UK/LDC/2022/0037
Property	: Grimshaw Place Grimshaw Street Preston Lancashire PR1 3BW
Applicant	: Grimshaw Place (Preston) Management Company Limited
Applicant's Representative	: Kelvin Burton – Homestead CSL
Respondent	: Various Leaseholders (see Annex A)
Type of Application	: Landlord & Tenant Act 1985 – Section 20ZA
Tribunal Members	: Mr John Murray LLB Mr. Colin Snowball MRICS
Date of Order	: 7 February 2023

DECISION

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DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made by the Applicant Grimshaw Place (Preston) Management Company Ltd for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to urgent works necessary to repair the roof line at the subject property, Grimshaw Place Grimshaw Street Preston Lancashire PR1 3BW, in addition to works to the gable wall. This application was received by the Tribunal on 18 May 2022.
2. Directions were made by a Procedural Judge on 8 July 2022 for the Applicant to prepare and file and serve a bundle of specified documents within 14 days of the directions, and any participating Respondent was directed to send a statement of case in response within 21 days of the Applicant's bundle being received. The Applicant was given a right of reply within 7 days of receipt of any Respondent's statement.
3. There followed some delay as the Tribunal did not appear to have received the Applicant's bundle although they stated it had been sent by post.
4. Further directions were made by a Legal Officer on the 2 December 2022 in similar terms to those made on 8 July 2022.
5. The matter was listed to be determined by way of submission of written evidence leading to an early determination or by a hearing if requested by the parties. A paper determination was considered appropriate in view of the urgency of the matter, and the lack of any request for an oral hearing by any party.

6. THE APPLICATION

7. The Application dated 26 April 2022 sought dispensation from the statutory consultation process.
8. The works required were to carry out necessary inspections, assessments and major repairs following the demolition of a neighbouring development. The works were said to be urgent due to the demolition having completely exposed the gable side elevation of the Grimshaw Place building, allowing an excess of cold air and moisture into the brickwork, causing water ingress.
9. Urgent repairs were required to repair the roof line of the property, following the demolition of the adjoining apartment block.
10. The Applicant felt it necessary to carry out the work due to the potential long term damage to the structure and stability of Grimshaw Place and to avoid more extensive and expensive repairs in the long term.

THE LEGISLATION

28. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

- (1) Where an application is made to the appropriate 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.
- (2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

- (a) may make provision generally or only in relation to specific cases, and
- (b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

THE APPLICANT'S BUNDLE

11. The Applicant submitted a bundle which included a section 20 notice addressed to all leaseholders of Grimshaw Place dated 13th May 2022.
12. A report prepared by Gary Collins of Paramount Roofing Systems was designed to highlight safety issues regarding the finish to the gable end after the demolition of the adjoining building.
13. It showed exposed original materials original plywood exposure allowing rockwool insulation to be exposed, the removal of dangerous capping prior to re-roofing, framing timber starting to rot, loose cladding and exposed wall. Cladding about to fall off and on to a busy pedestrian and vehicle highway. Front brick fascia was coming away from the gable block wall.

OBSERVATIONS FROM THE RESPONDENTS

14. Observations were received by the Tribunal from two leaseholders:
15. Mr. Jason Fox wrote to the Tribunal to indicate he did not object to the application as he understood without the application the repairs would be delayed further. He attached a letter he had sent to the Applicant outlining his concerns about the issue, and asking questions about circumstances prior and post demolition of the adjoining building, and pointing out that the resulting unsafe building was not the responsibility of the leaseholders.
16. Mr. Peter Moffatt wrote to the Tribunal to state that as he saw it, a third party had demolished an adjacent property causing direct consequential damage to Grimshaw Place. He said it was unclear as to whether this work was done lawfully within planning and building regulations and/or whether it was done negligently. It was unclear what recourse had been sought against the person(s) causing damage. He did not wish his property to be encumbered by massive communal repair bills when the cause appeared to lie with a third party. He made no objections about the lack of consultation as such.
17. The Applicant in response to a question by the Tribunal did not wish to add any further comments to the application.

THE DETERMINATION

18. The Tribunal has jurisdiction under section 20ZA to dispense with consultation before works have been carried out, as well as retrospectively when works have been carried out and completed, as some appear to have been here.
19. The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the consultation requirements. The application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 of the Act.
20. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of **Auger v Camden LBC [2008]**. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise
21. Dispensation was considered in depth by the Supreme Court in **Daejan v Benson [2013] UKSC14** which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
22. At paragraph 56 Lord Neuberger said it was “clear” that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work. In such cases it would be “odd” if the (LVT) could not dispense with the Requirements on terms which required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.
23. Lord Neuberger also confirmed that conditions could be imposed as to costs, aside from the Tribunal’s general powers to award costs, (which at that time were limited), drawing a parallel to the Court’s practice to making the payment of costs a condition of relief from forfeiture.
24. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.

25. In the UT's decision in *Aster Communities v Chapman* HH Judge Bridge explained that, after *Daejan*: "The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice". His judgement was upheld in the Court of Appeal in [2021] EWCA Civ 660
26. The Tribunal had a number of concerns about the quality of the application.
27. The Applicant failed to provide a bundle of documents or statement of case as directed, so that the Tribunal was left having to piece together the Applicant's case, particularly as no hearing was arranged.
28. The Applicant failed to provide any details of the background to the case, for example whether any Party Wall Act process had been followed, or what information, if any, had been provided to the Respondents, other than the s20 initial stage letter of 13 May 2022. No information was provided as to whether there was any response to this, despite being given until December of 2022 to do so. No copy of a structural engineer's report, referred to in both the application and in Mr Moffatt's correspondence, was provided. The Tribunal did not have an overview of what works are necessary or indeed what works have been completed, some eight months after the application was made. No details of what form of procurement exercise (if any) had been undertaken have been provided.
29. It was difficult to assess on the evidence before the Tribunal whether any prejudice may have ensued.
30. Nevertheless, the Tribunal observes the judgement in *Daejan*, that it is for a leaseholder to raise the issue of prejudice and satisfy the burden of proof. In this situation, neither leaseholder raised any possible issue of prejudice, nor did they object to dispensation being granted *per se*; they raised objections to paying for works necessary as a result of a third party's actions. Those objections would not be relevant to an application to dispense with consultation.
31. The Tribunal is satisfied that the works were necessary and that it was imperative to order them on an urgent basis to ensure the integrity of Grimshaw Place and accordingly makes an order under s20ZA to dispense with consultation.
32. This judgement does not address the question of whether the costs of the works are either payable, under the terms of the lease, or reasonable in terms of amount and quality of works, and any leaseholder who has concerns in any of those respects has a right to apply to the Tribunal pursuant to s27A Landlord and Tenant Act 1985. This would include a situation where a leaseholder considered costs should be met by a Third Party responsible for them if it was appropriate and possible for the Applicant to pursue them.

Tribunal Judge J Murray LLB
7 February 2023

Annex A

Leaseholders

Flat Number	Name
Flat 1	Astro Residential Properties, Lettings & Mgt Ltd
Flat 2	Mr M Lawler
Flat 3	Mr & Mrs M Desborough
Flat 4	Mr M J Feeley
Flat 5	Mr A L Stevens
Flat 6	Mrs E Hodges
Flat 7	Mr B D Kirkpatrick
Flat 8	Mr P J & Mrs C P Lockyer
Flat 9	Mrs R Brammer
Flat 10	Miss S H Sacofsky
Flat 11	Mr M J Lovatt
Flat 12	Miss K M Rankin
Flat 13	Mr D K H Lee
Flat 14	Mr & Mrs D Copland
Flat 15	Mrs D T McKay
Flat 16	Mr T Paluca & Mrs I A R Ishac
Flat 17	Ms J Girdziusaite
Flat 18	Ms R R Wenham
Flat 19	Mr I H Shah
Flat 20	Mr & Mrs S Benison
Flat 21	Miss J Sobiechowska
Flat 22	The Estate of mrs D M Keaveney
Flat 23	Mr M Galbraith
Flat 24	Mr P Moffatt
Flat 25	Mr & Mrs K T Sharkey
Flat 26	Mr A J Williams
Flat 27	Mr J L Fox
Flat 28	Ms Rukhsana Aslam
Flat 29	Mr N J Feroz
Flat 30	Mr & Mrs G F Phillips
Flat 31	Cast Properties Limited
Flat 32	Mr G J & Mrs K A Coleman
Flat 33	Mr & Mrs M A Thompson
Flat 34	Mr O Adari
Flat 35	Mr S W Hashimi
Flat 36	Mr J A M McGuinness
Flat 37	Mr P Sadler
Flat 38	Mr N R Coleman
Flat 39	Mr N Wilkinson
Flat 40	Mr B & Mrs F Timol
Flat 41	Mr & Mrs R Gleeson
Flat 42	Mr & Mrs P Savage
Flat 43	Mr & Mrs D G O'Driscoll