



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

**Case reference** : **CAM/26UK/LDC/2022/0038**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **Victoria Court, Queens Place,, 89a  
Queens Road, Watford, WD17 2QR**

**Applicant** : **Places for People Homes Limited**

**Respondent** : **The long leaseholders of the  
Property**

**Type of application** : **Dispensation from the consultation  
requirements as set out in Section  
20ZA of the Landlord and Tenant  
Act 1985**

**Tribunal members** : **Mr P Roberts FRICS CEnv**

**Date of Determination** : **7 March 2023**

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**DECISION**

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This has been a telephone hearing determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper hearing described above as **P:PAPERREMOTE**. A hearing was not held and all issues were determined on the papers. The Applicant submitted a bundle extending to 70 pages. The Tribunal has noted the contents and the decision is below.

## Decision

**The Tribunal grants the application for retrospective dispensation from further statutory consultation in respect of those works to the roof carried out by JLB Property Maintenance Limited during the period 5 November 2021 to 12 November 2021.**

**The applicant shall be responsible for serving a copy of this Decision on all of the Lessees.**

**In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable (section 27A of the Act).**

## Reasons

### **Background**

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (the “Act”) for retrospective dispensation from the statutory requirement to consult in respect of qualifying works that are described at paragraph 1 of their Statement of Case as:

*“...the erection of scaffolding and installing an overlay system using high performance torch on felt. The reinstatement works included the following; to clean, prepare degrease of the roof, cut seal blisters, seal de bonded laps, prime roof, install an over laying torch cap sheet to all areas, install grp trims where necessary and the cost of skip hire. The total costs was (sic) £23,984.86.”*

2. The works were completed during the period 4 November 2021 to 12 November 2021 after which the Applicant advises that:

*“ ...there have been no further leaks of concerns regarding the roof.”*

3. No representations have been received from any of the lessees.
4. Before making this determination, the papers received by the Tribunal were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given the lack of any challenge.
5. **The only issue for determination is whether it is reasonable for the Tribunal to dispense with the statutory consultation requirements.**

6. **The Tribunal has not considered whether the service charge costs will be reasonable or payable or by whom they will be payable.**

### **The Law**

7. Section 20 ZA (1) of the Act states:

*“Where an application is made to a Leasehold Valuation 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.”*

8. In having regard to the question of reasonableness, the Tribunal has considered the extent to which the Lessees would be prejudiced in dispensing of the requirements.
9. The Supreme Court provided guidance to the Tribunal in the application of section 20 AA (1) of the Act in case of *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (the “Daejan case”). The principles can be summarised as follows:
  1. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements.
  2. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  3. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  4. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  5. The Tribunal has power to impose a condition that the landlord pays the tenants’ reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord’s application under section 20ZA (1).
  6. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying any “relevant” prejudice that they would or might have suffered is on the tenants.
  7. The court considered that “relevant” prejudice should be given a narrow definition; it means whether noncompliance with the consultation requirements has led the landlord to incur costs in

an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

8. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
9. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
10. The Tribunal has therefore applied the statutory provisions in accordance with the approach taken in the Daejan case.

### **Representations – The Applicant**

11. The Statement of case provided by the Applicant set out the following points:
  - a. The Property comprises a four-storey block of nine flats constructed in 1993. On 29 August 2021 there was a severe leak through the ceiling of Flat 7 from the roof above. As a result, an inspection of the roof was undertaken on 17 September 2021 which identified 27 defects.
  - b. The Applicant sent a Notice of Intention to all Lessees dated 27 September 2021 following which temporary fixes were carried out on the 6<sup>th</sup> and 26 October 2021.
  - c. Two quotes were obtained which were issued to all Lessees on the 2<sup>nd</sup> November 2021. JLB Property Maintenance Ltd were appointed, and erected scaffolding ahead of commencing work on the 5 November 2022. These works were completed and the scaffolding removed on 12 November 2021.
12. The Applicant states at paragraph 18 of their Statement of Case that:

*“A form of a Notice of Intention was issued to the leaseholders on the 27<sup>th</sup> September 2021, informing them of the proposed works. Another letter was sent out to the leaseholders named Statement of Estimate along with both quotes. The Applicant instructed that the works should be carried out immediately as Flat 7 was seriously damaged. Due to the severity of the damages, the consultation phase with the leaseholders was not completed. The leaseholders were also advised how their statutory right would be compromised, and that an application for dispensation would be made to the Tribunal.*

*No observations received”*

13. The Tribunal has reviewed the Roof Integrity Test Report carried out by JLB Property Maintenance Limited and has noted the Schedule of

Defects contained therein together with the further photographs provided at pages 43 to 70 of the Bundle.

### **Representations – The Lessees**

14. The Tribunal notes that the Applicant reports that they have received no observations from the Lessees.
15. In addition, the Tribunal has not received any representations from the Lessees.

### **Determination**

16. As set out above, the Tribunal may grant dispensation “...if satisfied that it is reasonable to dispense with the requirements”.
17. In making its decision the Tribunal has regard to the extent to which any real prejudice has arisen to the Lessees as a result of the Applicant breaching the consultation requirements.
18. No objections or representations have been received by the Tribunal from the Lessees and it is noted that the Applicant did not receive any representations in response to its notices. The Tribunal therefore has seen no evidence of any prejudice arising to the Lessees.
19. The Tribunal therefore grants dispensation from the remaining consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the works carried out to the roof as more particularly described above.
20. In granting dispensation, the Tribunal makes no determination in respect as to whether any of the service charge costs are reasonable or payable.
21. The Applicant shall comply with the requirements as set out under the section headed “Decision” above.

**Name:** Peter Roberts FRICS CEnv

**Date:** 1 March 2023

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property, and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).