



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

Case Reference : CHI/43UL/LDC/2022/0095

Property : Nanhurst House, Elmbridge Road,
Cranleigh, Surrey, GU6 8JX

Applicant : Nanhurst Management Company Limited

Representative : Warwick Estates

Respondent : -

Representative :

Type of Application : To dispense with the requirement to consult
lessees about major works
Section 20ZA Landlord and Tenant Act 1985

Tribunal Member(s) : Mrs J Coupe FRICS

Date of Decision : 6 February 2023

DECISION

Summary of the Decision

The Tribunal grants dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985 in respect of undertaking urgent remedial work to the roof in order to prevent further water ingress.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 27 October 2022.
2. In the application the Applicant describes the property as a Grade II listed converted mansion house comprising twelve leasehold flats.
3. The Applicant seeks dispensation on the grounds that one of the leasehold flats is experiencing water ingress, the source of which is the roof. Having invited contractors' quotations for the required works, the Applicant identified that the costs are likely to exceed the s.20 limit. As the reparatory works are considered urgent, the Applicant seeks to place the works contract without delay and therefore invites dispensation from the consultation requirements of s.20 of the Act.
4. The Tribunal made Directions on 9 November 2022, advising that it considered that the application was suitable for determination on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 7 days. The Tribunal received no objections.
5. On 11 November 2022, the Applicant confirmed to the Tribunal that all leaseholders had been issued documentation in accordance with the Tribunal directions dated 9 November 2022.
6. On 3 January 2023, the Applicant advised the Tribunal that no objections to the application by any leaseholders had been received.
7. Included within the Tribunal directions was a form for the Respondent leaseholders to indicate to the Tribunal whether they agreed or opposed the application and whether they consented to the Tribunal determining the matter on the basis of written representations.
8. Three replies were received, all agreeing to the application. No objections were received. Accordingly, and in accordance with paragraph 15 of the directions all leaseholders are removed as Respondents.
9. The Applicant's application referred to “*attached quotes and evidence of damage thus far*”. However, these documents were not provided with the application.

10. On 27 January 2023 and in response to correspondence issued by the Tribunal Case Officer, the Applicant provided copies of two quotations:
 - i. JSK Baker Roofing Ltd £8,040.00
 - ii. Julian Watts £4,895.00
11. The Applicant advised the Tribunal that it intended to instruct J Watts upon confirmation of dispensation and, further, that s.20 Notices of Intention had been served on all leaseholders.
12. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.
13. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

14. The relevant section of the Act reads as follows:

S.20ZA Consultation requirements:

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.

Discussion

15. There is no objection to this application by the leaseholders. However, the Tribunal must be satisfied under s.20ZA that it is reasonable to dispense with the consultation requirements.
16. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“Daejan”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20. In summary, the Supreme Court noted the following:
 - i. 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.
 - ii. 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.

- iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. 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).
 - vi. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - vii. The Supreme Court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance 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.
 - viii. 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.
 - ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
17. The circumstances of the application are contained within the application form. In summary, following investigation of water ingress into a leaseholders flat, damage to the roof was identified. The required reparatory works comprise *"Prepare existing roof, install primer to existing roof, install polyurethane base coat with fibre glass embedment matting. Supply and install grey top coat. Supply and install new guttering to discharge water away from roof."*

Determination

- 18. Dispensation from the consultation requirements of s.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan referred to above.
- 19. Roofing repairs to ensure a watertight structure and to prevent water ingress are clearly matters of urgency. No leaseholder has raised any objection and therefore the type of prejudice referred to in Daejan has not been identified.

20. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements in respect of necessary works to the roof as described in paragraph 17 above.
21. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable. The leaseholders are not prevented from challenging the reasonableness of any service charge arising from the relevant work.
22. The Applicant is to send a copy of this determination to all of the leaseholders liable to contribute to service charges.

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.