



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

Case Reference : CHI/19UJ/LDC/2023/0025

Property : Edward Court, 16 The Esplanade,
Weymouth, Dorset, DT4 8DT

Applicant : Edward Court Residents Association
Limited

Representative : Battens Solicitors

Respondent : Mr D King

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 : Judge D Whitney

Date of Decision : 14 April 2023

DIRECTIONS

Background

1. The Applicant seeks 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. The application was received by email on 23 February 2023.
2. The property is described as a purpose built block consisting of 1 maisonette, 11 flats and 1 commercial unit.
3. The Applicant explains that *“because of the disrepair of the roof, severe water ingress into Flat 8 is occurring when it rains. The ceiling has been taken down because of water damage and the flat is currently uninhabitable.”*
4. The works are described by the Applicant as:

“The Landlord requests dispensation from a Section 20 consultation on the basis of the urgency of the work required to the roof which is as follows: Scaffolding will need to be erected and roofing slates removed to the top left of a large dormer. Ridge tiles to be removed, inspect and replace the layboard if required and correctly install all the slate work. Lead soakers to be removed and correctly installed.

The lower felt roof is in a poor condition and needs to be stripped, reinsulated, boarded and GRPd throughout. The slate work in the valley and above will also be stripped out, re-felt and battened and reinstated with matching natural slates. The guttering to lower right hand dormer will have correct deip detail and new guttering installed as necessary. The works are to be carried out as soon as possible.

The requirement for the works have very recently come to light and no consultation has yet taken place. A letter has been sent to all of the leaseholders informing them of the necessity for the works and this application for dispensation.

To avoid further deterioration and damage, the works need to be undertaken as soon as possible. There is insufficient time to comply with the consultation requirements under Section 20 of the Landlord and Tenant Act 1985.”
5. Directions were issued on 1st March 2023.
6. Three responses from leaseholders were received to the application. Messrs. Morris and Underwood agreed to the application. Mr King, the owner of Flat 3 and the commercial premises objected and requested that the matter be dealt with at a hearing.

7. The matter was listed for a hearing.

The Law

8. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year 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.
9. 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”.
10. 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.
11. 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”.
12. 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).
13. 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.”

14. 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.
15. 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.
16. If dispensation is granted, that may be on terms.
17. The effect of Daejan has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

The Hearing

18. The hearing took place by BT Meet me on 14th April 2023.
19. Mrs Swann of Battens Solicitors represented the Applicant. Mr King represented himself.
20. I confirmed I had read the application, supporting documents and all documents which Mr King had sent in.
21. Mr King explained that he accepted works were required to be undertaken but objected to these being undertaken whilst works were required in respect of Flat 3 and the commercial unit of which

he was the leasehold owner. He explained he had been complaining for a long period of time that various works were required but nothing had taken place. He could not understand why now the Applicant was seeking to have the works, which were the subject of this application, undertaken so quickly. He did not dispute these works needed to be undertaken. In his view it was a question of fairness for the works he said were required to his units to also be undertaken.

22. He explained he had offered at a recent AGM of the company to withdraw his objection.
23. Mrs Swann explained that it was accepted some other works were required. Issues had arisen as to who may be responsible for the costs of the same. She submitted these works were works that her client was required to undertake under the terms of the leases being significant damage to the roof of the Property. She agreed Mr King had offered to withdraw his objection but this was conditional upon the works relevant to his units were undertaken first and this could not be agreed to.
24. Mrs Swann invited me to grant dispensation. Further she suggested that Mr King was not really objecting to dispensation and a hearing had not been required and he should pay the costs of the same.
25. Mr King stated he should not pay the costs as he believed his views and complaints were simply being ridden roughshod over and so he had no choice but to object.
26. At the conclusion both parties confirmed they had made all submissions they wished to make.

Decision

27. I am satisfied that dispensation should be granted to the Applicant to the roof as set out in paragraph 4 above.
28. I make clear in making this determination I make no findings as to whether the works or the costs of the same are matters which can be recovered as service charge costs from any leaseholder.
29. I make this decision on the basis I am satisfied that there is an urgent need for works to be undertaken. One flat (Flat 8) is being affected by water ingress. I am satisfied that such works are urgently required and it is appropriate for such works to be urgently undertaken without a statutory consultation being undertaken.

30. I am supported in my findings by the fact that only Mr King objected to the application and he told me at the hearing that he accepts the works are required. He did not challenge that repairs to the roof are required and that these may be considered urgent.
31. I have considered whether or not Mr King has suffered any prejudice by my granting dispensation and if so what conditions if any should be attached. I am satisfied that he will not suffer any prejudice by my granting dispensation. Mr King's complaint is that essentially he has been adversely affected by the Applicant not undertaking works he believes are required to prevent damage to his two units. This is a separate matter in my judgment and Mr King must take his own advice as to what remedies may be open to him. I make clear I make no findings on the same but I am satisfied it is not a relevant consideration for me to take account of in this instance case in granting dispensation.
32. I do however record that it was accepted by Mrs Swann that it may be certain repairs are required. She referred to various issues having to be considered including whether or not the Applicant was responsible for the same.
33. Mrs Swann invites the Tribunal to order that Mr King should pay for the Tribunal fees paid by the Applicant. She suggests a hearing was only required because of his objection and if I grant dispensation the Applicant should recover the tribunal fees paid.
34. I decline to make such an order. The mechanism for dispensation exists to give leaseholders an opportunity to express their views when works are to be undertaken without the strict consultation requirements being adhered to. Mr King has engaged with this process. Whilst I have found his grounds for objection are not matters which prevent me granting dispensation (or show any prejudice upon him) in my judgment a Tribunal should be slow to order a leaseholder to refund fees. To do so would deter leaseholders from expressing their views on such applications. The intention is that leaseholders are afforded opportunity to put forward their case. I am also cogent that in this case it is accepted by the Applicant that other works which Mr King has been seeking it is accepted do need to be undertaken. The points he raised cannot therefore be said to have no merit.
35. Taking account of all I have heard I am satisfied that my discretion as to costs should be exercised such that no order is 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
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.