



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

**Case reference** : **CHI/23UC/LDC/2023/0013**

**HMCTS code  
(paper, video,  
audio)** : **CVP: VIDEOREMOTE**

**Property** : **2 The Waterloo Cirencester GL7 2PZ**

**Applicant** : **R M Residential Ltd**

**Representative** : **Ms Bloomfield of Counsel**

**Respondents** : **Westacre Estates Ltd  
Bellrise Designs Ltd**

**Representative** : **Mr Waites**

**Type of application** : **Application for dispensation from  
consultation requirements under s20ZA  
of the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge FJ Silverman MA LLM  
Mr M Woodrow  
Ms J Dalal**

**Date of decision** : **04 May 2023**

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**DECISION**

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This has been a remote hearing which has been not objected to by the parties. The form of remote hearing was CVP VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined at the video hearing. The documents that the tribunal was referred to are in an electronic bundle of circa 430 pages, the contents of which have been noted. The order made is described below.

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## DECISION

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The tribunal declines to exercise its discretion to grant dispensation from the consultation requirements of s20ZA in respect of the works required to repair the building known as 2 The Waterloo Cirencester GL7 2PZ

## REASONS

1. By an application made to the Tribunal on 31 January 2023 the Applicant seeks a determination of its application for dispensation from the consultation requirements imposed by s. 20 of the Landlord and Tenant Act 1985.
2. Directions were issued by the Tribunal on 02 February 2023
3. This matter was determined at a hearing in Havant on 18 April 2022 at which the Tribunal considered the parties' representations and accompanying documents. The Applicants were represented by Ms Bloomfield of Counsel and Mr Waites represented both Respondents.
4. The Applicant applied for dispensation from the statutory consultation requirements on the grounds that the repairs which effectively comprised the entire refurbishment of the building including (as a second tranche of the works) asbestos removal, were urgently needed because the building was structurally unsound and in danger of collapse.
5. An initial S20 letter was sent to both Respondents dated 7<sup>th</sup> May 2021 (page 204) which informed them that works would be commenced. This letter did not indicate the costs of the works. This letter was sent some three months after the works had commenced.

6. A report was prepared by Mr Payne of RPA (page 122), a company associated with the Applicant company, which recommended a series of works to be carried out some of which were said to be urgent or which should be commenced immediately. The Applicants rely on the findings of this report to justify the commencement of the works prior to issuing s20 documentation which they admit was in part non-compliant with the requirements of the section. The Tribunal is not satisfied that this report gives an independent and unbiased view of the proposed works because Mr Payne is also a Director of the Applicant company. He did not give evidence at the hearing.
7. A second report was prepared by Mr Partridge, a structural engineer, largely agreed with the nature of the works to be done but took a more measured approach to the seriousness and urgency of them. In particular he stressed at page 424 that: ‘at no point did I indicate during my investigation or in later communications that the property is about to collapse’. Mr Partridge was not present at the hearing, his evidence was not therefore subjected to cross examination.
8. By the date of the Applicants’ application to the Tribunal all of the works had been completed. The total cost of the works was not mentioned by the Applicants in their application but it appears to have been in the region of £123,000 which would potentially have to be paid in part by the Respondents under the service charge provisions contained in their respective leases.
9. The Applicants bought the property at auction in December 2020 and commenced refurbishment works almost immediately thereafter. It must have been evident to them both by the price paid for the property (£79,000) and its physical state that the property was in need of substantial repair/renovation works which would inevitably cost more than the statutory limit of £250 per tenant.
10. Photographs of the property included in the Tribunal bundle suggest that at the point of sale the property was in a poor state of repair. In accordance with current Practice Directions the Tribunal did not make a physical inspection of the property and was not invited by the parties to do so. It considered that the issues before it could be resolved without an inspection of the property.
11. The Applicants admit that a full consultation was not undertaken but said that the Respondents were sent a Notice of Intention and were both notified of the intention to apply to the Tribunal for dispensation from the consultation requirements as stated above.

12. They insist that it was necessary to start the works immediately because the building was likely to collapse. Although the words 'urgent' 'immediate' and 'necessary' do appear in Mr Payne's report (see above para 7) the Tribunal prefers the more moderate approach taken by Mr Partridge who agrees that some works are urgent but denies the fragility of the structure of the building. The Tribunal takes the view that none of the works undertaken by the Applicants could not have waited for the 2-3 months during which a proper s20 procedure could have been carried out. The only possible exception to that would be the removal of asbestos which had been sealed but was exposed by the Applicants during the course of the works they were doing to the interior. A separate application under s20ZA could have been made in respect of the asbestos removal but this was not done.
13. Ms Meigh a Director of the Applicants, an established property company, gave evidence on their behalf. She conceded that Mr Payne had a conflict of interest caused by his Directorships of both the Applicant company and the company carrying out the survey of the property. She said that the Applicant had entrusted the service of the s20 notices to a managing agent who had let them down by serving the wrong notices. The Tribunal does not accept that this is a valid excuse for undertaking a programme of major works without following the correct statutory procedures.
14. The Respondents appear not to have raised objections at the time of the initial letters sent to them but now argue that the works were either unnecessary or poorly executed. Objections to the application have been received from the Respondents (page 326).
15. The Applicants purchased the property at auction in December 2020 and said they were 'unable' to serve a s20 notice before they started the 'urgent' works. It appears that their title to the property was not registered at HM Land Registry until 07 January 2022.
16. By s27(1) Land Registration Act 2002 title to registered land does not pass until registration which means that at the time when the Applicants carried out the work at the property, they were not the legal owners of the property. They owned only an equitable interest which would not entitle them to enter and do works on the property without the legal owner's permission nor to serve a s20 notice or commence legal proceedings in their own name. There is no evidence that they had either sought or obtained the legal owner's permission before carrying out the works.
17. The Tribunal is not impressed by the Applicant's arguments that as equitable owners of the property the Applicants were entitled to do the works without consent of the registered proprietor.

18. It appears therefore that the Applicants had no locus standi either to do the works or to make a s20ZA application prior to their registration of title on 07 January 2022 by which time the works had been completed. It is noted that the Applicant's application is dated 31 January 2023. They are therefore making an application retrospectively to dispense with consultation for works which they carried out to a property when they did not own it. The Tribunal cannot condone this action.
19. Further, the Applicants argues that the case of *Daejean Investments Ltd v. Benson [2013] UKSC 54* states that dispensation must be given unless there is evidence of actual prejudice being caused to the Respondents and no such prejudice had been asserted or proved in this case. The Tribunal agrees that the Respondents have not addressed prejudice, but lack of prejudice does not correct the lacunae in the Applicants arguments as discussed above. First, they have a potentially insuperable problem in attempting to obtain a dispensation for works carried out to a property which they did not at that time own and secondly, they have not satisfied the Tribunal that the works were so urgent and necessary that they could not wait two or three months before being started.
20. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:
- “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*” (emphasis added).
21. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable.
22. In the present case the works which were done have been described by the Applicants as both structural and urgent. However, insufficient evidence has been produced to support this assertion, and the evidence that has been produced by Mr Payne is conflicted as he has a direct interest in the property. This interest was not declared to the Tribunal, and only became apparent at the Hearing. In addition to the reports from an independent surveyor and structural engineer detailing the works to be carried out the Tribunal would have expected to see full estimates for the proposed works and a schedule of works.

23. All the works are said to have been completed but there is no documentary evidence of their satisfactory completion.
24. Having considered the submissions made by the Applicants the Tribunal is not satisfied that they have demonstrated the urgency of the works nor explained in detail the extent or costs of those works.
25. Neither can it consider giving a retrospective dispensation in relation to a property which the Applicants did not own at the time when the works were carried out.
26. This is not therefore a situation in which the Tribunal considers it appropriate or reasonable to exercise its discretion under s20ZA in favour of the Applicants and accordingly refuses the Applicants' application.
27. This determination does not affect the tenants' rights to apply to the Tribunal challenging the payability or reasonableness of the service charges.

Judge F J Silverman as Chairman  
**Date 04 May 2023**

Note:  
Appeals

## **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](mailto: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.
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.

