



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

Case Reference : CHI/00HB/LDC/2022/0100

Property : 6, 7 & 8 Eaton Crescent, Bristol, BS8 2EJ

Applicant : Lady Stratheden Management Company Limited

Representative : Easton Bevins

Respondents : The Leaseholders

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(s) : Judge Tildesley OBE

Date and Venue of Hearing : Determination on Papers

Date of Decision : 8 February 2023

DECISION

The Application

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 on 18 November 2022.
2. The property is described as 21 one, two and three-bedroom apartments split across three large buildings which dated back to the late 19th Century and were converted into flats in the 1990's. The buildings were of stone construction with slate roofs.
3. The Applicant explained that contractors were on site carrying out roof covering replacement and other works with a completion date of 9 December 2022. During these works there were concerns raised over the condition of the timber structure and safety of the rear dormers/skylights. According to the Applicant there was a potential health and safety matter and therefore the replacement or significant temporary repair was required immediately. Any delays beyond 9 December would result in additional scaffold hire cost.
4. The Applicant sought dispensation on the grounds that (1) the rear dormers and skylights were beyond economic repair and posed a serious health and safety risk as they were located above the communal areas, and that (2) the works to replace the rear dormers and skylights should run concurrent with the roof replacement works in order to contain costs.
5. The Applicant had undertaken extensive consultation with the leaseholders regarding the replacement of the dormers/skylights, and stage 1 and 2 Notices had been issued. The Applicant had negotiated a price for the works from the contractor carrying out the roof refurbishment. An emergency leaseholders meeting was held on 16 November 2022 with all leaseholders invited. At the meeting the Directors explained the situation and the leaseholders were asked to vote on their preferred way forward. The majority voted to complete the project which included the rear dormers/skylights and make a further contribution as a levy. The Directors informed the leaseholders that an application for dispensation from consultation would be made.
6. On 24 November 2022 the Tribunal directed the Applicant to serve the application and directions on the Respondents, which the Applicant did on 25 November 2022
7. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 2 December 2022 indicating whether they agreed or disagreed with the Application. The Tribunal received no completed returns.

8. The Tribunal also directed the Applicant to confirm to the Tribunal by 5 December 2022 that no objections have been received from the leaseholders. The Applicant failed to do that.
9. On 28 January 2023 the Tribunal directed that Unless the Applicant informed the Tribunal about objections received by 12 midday on 6 February 2023 the Application would be struck out without further notice on the ground that the Applicant had failed to co-operate with the Tribunal in accordance with rule 9(2)(b) of the Tribunal Rules 2013.
10. On 1 February 2023 the Applicant confirmed that it had received no objections.

Determination

11. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
12. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
13. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
14. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a

landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.

15. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
16. The Tribunal now turns to the facts. The Tribunal is satisfied that it was necessary as a matter of urgency to replace the rear dormer and skylights in view of the health and safety concerns. The Tribunal is also satisfied that the Applicant acted reasonably to run the works concurrently with the roof works. Given those circumstances the Applicant if it had gone through the full statutory consultation exercise it would have inevitably increased the health and safety risks and the costs for the proposed works. The Tribunal takes into account that no leaseholder has objected to the Application. The Tribunal observes that although the Applicant did not comply fully with the statutory consultation requirements it did engage the leaseholders in extensive consultation about the proposed works.
17. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

18. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works carried out to replace the rear dormers/skylights.**
19. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

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.