



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

**Case Reference** : CHI/21UD/LDC/2023/0042

**Property** : Flats 1-14 Stafford Court, 50-51 Eversfield Place, St Leonards-On-Sea, East Sussex TN37 6DB

**Applicant** : Stafford Court Limited

**Representative** : Oakfield P.M. Ltd

**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** : 19 May 2023

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DECISION

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## **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. A signed copy of the application was received on 31 March 2023.
2. The property is described as a converted building of 14 flats over five levels with one basement level. The building is situated on St Leonards seafront.
3. The Applicant explained that the top floors flat (12 & 14) were experiencing water ingress in the rear rooms and that urgent works were necessary to prevent further damage to the flats. The qualifying works involved the erection of scaffolding to gain access to the roof which would then enable the contractor to clean out the gutters, fix the stainless steel drip beads over lead flashing, apply rapid roof system to the chimney stack and to carry out the necessary works to the concrete ledge which had deteriorated significantly.
4. The Applicant had obtained three quotations from the contractor to carry out the works which totalled £14,976.00. The Tribunal, however, believes that the quotations involving the scaffolding may be two separate quotations for the same works (one lower and one higher) which may reduce the total cost to the leaseholders,
5. The Applicant stated that it had originally commenced the statutory consultation procedures for external repairs and re-decoration and had issued a Stage 1 notice. However, it soon became apparent that the works were urgent and the Applicant needed to resolve the issues more quickly.
6. On 24 April 2023 the Tribunal directed the application to be heard on the papers unless a party objected within 7 days. Further the Applicant was required to serve the application and directions on the Respondents. On 26 April 2023 the Applicant confirmed that it had provided the Respondents with the application and directions.
7. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 8 May 2023 indicating whether they agreed or disagreed with the Application. The Tribunal received responses from Annika Davidson of Flat 3, Roberta Graham of Flat 10 and Deborah Snook of Flat 11. The three leaseholders agreed with application. Ms Snook, however, voiced concerns about the delay it took the surveyor to identify the problem which created the need to bypass the consultation processes, and that the leaseholders have not been made aware of the potential costs of the works.

## Determination

8. 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.
9. 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.
10. 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.
11. 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”.
12. 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.
13. The Tribunal now turns to the facts. The Tribunal is satisfied that the works were urgent and necessary. The Applicant supplied photographs

to show the extent of the water ingress. The Tribunal accepts that the Applicant could not wait to carry out the full consultation exercise to remedy the defects causing the water ingress. The Tribunal notes that no leaseholder has objected to the works, and that the three leaseholders who responded did not oppose the application for dispensation. The Tribunal acknowledges the concerns expressed by Ms Snook about the delay in identifying the problem and that the costs could be higher where there has been no competitive tendering. The Tribunal, however, notes that a substantial proportion of the estimated costs related to the costs of scaffolding which would have been incurred if the consultation had taken place

14. The Tribunal is, therefore, satisfied on balance that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

### **Decision**

15. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works to the roof, gutters and chimney stack.**
16. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders who did not respond 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](mailto: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.