



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

Case Reference : CHI/18UC/LDC/2023/0062

Property : Maryland Court, 10 Spicer Road, Exeter,
Devon, EX1 1SY

Applicant : Maryland Court Management Company
Limited

Representative : John Venmore

Respondent : John Venmore & June Venmore (Flat 1)
David Malcolm Baker (Flat 2)
Arthur Maurice Smith & Margaret Ann
Smith (Flat 3)
William Frank Laws & Marilyn Janice
Laws (Flat 4)
Robert James Ring (Flat 5/6)

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 : D Banfield FRICS, Regional Surveyor

Date of Decision : 19 June 2023

DECISION

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 on 30 May 2023.

2. The property is described as:

“Maryland Court is a purpose built three storey timber-framed development of 6 flats. It was completed in or about 2007 with the two third floor flats merged into one at the instigation of the original purchaser of the two leases. These flats are now known as Flat 5/6. The two leases have not been merged into one. Together those flats have a large balcony which stretches across the full width of the building. That balcony and the substructure provides a form of ceiling for the balconies of Flat 3 and Flat 4 and also for a significant part of the living room of each flat.

The Freehold is held by Maryland Court Management Company Limited of which there are currently 3 directors. The freehold is shared with each flat having one share in the company.

As a shareholder and leaseholder the ‘owner’ of Flat 5/6 has two votes at meetings and he pays two shares of the service charges.

The 6 leases are identical save that the leaseholder of Flat 2 is not required to contribute to the costs associated with the lift which mainly services the top floor.”

3. The Applicant explains that:

“There has been visible ingress of rain water from above into Flat 3 and Flat 4 on multiple occasions beginning in May 2021. In October 2021 there was a serious ingress of water into Flat 3 with significant damage to the living room ceiling. The ingress continued into 2022 until the leaseholder of Flat 3 successfully resealed the watertight membrane.

On 30 April 2023 there was a serious ingress of rain water from above onto the first floor balcony of Flat 3. The leaseholder removed the coverings to expose the timbers supporting the top floor balcony and the source of the ingress. There is serious rot the full extent of which has yet to be determined. The surveyor has advised that substantial support is required now and that there is a need to involve a structural engineer.

At this stage and before investigations have been completed the surveyor has advised that major works will be required. It is regarded as very important that these should be completed and the integrity of the building restored as soon as possible and in any event before the onset of autumn. The remedial works, whatever they may be, are urgent.

It is understood that all Leaseholder Respondents are in agreement that urgent major works are required and that they will CONSENT to this application being granted.”

4. And further:

“The full extent of necessary works will not be known until after areas, including tiling, identified by the surveyor and his builder have been opened up and inspected and the advice and calculations of a structural engineer received by the surveyor. At this stage it is certain that some rotting and disintegrating timbers will have to be removed and replaced. The extent to which the tiling of the top floor balcony will have to be removed or replaced is unknown. The investigations will include the drainage of water from the top floor balcony.

- A. An Extraordinary General meeting attended by all shareholders (leaseholders) was held on 6 April 2023. The meeting resolved, without dissent, to instruct an independent expert surveyor to inspect and advise.
 - B. Mr Jonathan MRICS of Baker & Baker, Exeter was instructed on 16 April 2023 and produced his Initial Assessment report on 27 April 2023.
 - C. On 4 May 2023 a large quantity of rotten timber was washed down from the substructure of the top floor balcony on to the balcony of Flat 3 causing alarm. That day in the absence of Mr Jonathan Baker another surveyor, Mr Matthew Baker MRICS visited urgently. He advised the installation of an Acrow Prop. Temporary propping was then erected.
 - D. On May 2023 Mr Matthew Baker attended with a builder and a scaffolding contractor to arrange the extent of the initial opening up and for the secure propping of the top floor balcony and sub-structure above the balconies of Flat 3 and Flat 4. They advised that the existing temporary support is insufficient and that two Acrow Props are required on both second floor balconies together with scaffolding on both front corners of the building. The date for the installation of these props and for the opening up work has been chased and is awaited.
 - E. All tenants have been kept informed with works freely discussed. They are concerned that progress both in the investigations and in the execution of any recommended works should be as fast as possible.
-
- A. The initial Assessment Report has been received and circulated to Leaseholders. A consultation period is unnecessary and dispensation is sought as the surveyor proceeds to carry out his further investigations and then to report in detail.
 - B. The surveyor will be instructed to oversee the recommended works and it is likely that his recommended builders or other trades will be engaged by the Landlords (the company) with the consent of all Leaseholders. They are all resident in Maryland Court. A consultation of 30 days will not be required. The Applicant seeks dispensation or, in the alternative an Order reducing this period to 7 days.
 - C. The estimate or estimates will be circulated to all Leaseholders on receipt. The Applicant seeks dispensation or, in the alternative, an Order reducing this period to 7 days.

D. In making this application the Applicant relies on the unanimous wish of all Leaseholders to get any recommended works completed as soon as possible and to do so over the summer months.”

5. The Tribunal made Directions on 7 June 2023 setting out a timetable for the disposal. The Tribunal sent them to the parties together with a form for the Leaseholder to indicate to the Tribunal whether he agreed with or opposed the application and whether he requested an oral hearing. If the Leaseholder agreed with the application or failed to return the form he would be removed as a Respondent although he would remain bound by the Tribunal’s Decision.
6. Four replies were received all agreeing with the application. No requests for an oral hearing were made. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.
7. 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.

The Law

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

S.20 ZA 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.
9. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following.
 - a. 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.
 - b. 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.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. 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).
- f. 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.
- g. The 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.
- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 10. The Applicant's case is set out in paragraphs 2 to 4 above.

Determination

- 11. 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 v Benson referred to above.
- 12. No objections have been received. No prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of:-
 - a. The initial Assessment Report, further investigations and detailed report.
 - b. Reduction of consultation periods from 30 to 7 days.

13. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
14. The Tribunal will send a copy of this decision to the lessees.

D Banfield FRICS
19 June 2023

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.