FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/21UD/LDC/2023/0048
Property	:	Flats 1 -5, 17 Devonshire Road, Hastings, East Sussex, TN34 1NE
Applicant	:	Ivor Henderson Anne Henderson
Representative	:	Oakfield P.M. Ltd
Respondents	:	Kathleen Margetts (Flat 1) Neil John Marriott (Flat 2) Louise Maxine Yolande Atfield (Flat 3) Beverley Anne Sayers (Flat 4) Dr John Murray Hobson (Flat 4) Vladimiras Sviridovas (Flat 5) Igor Dubovskij (Flat 5)
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	:	23 June 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. A signed copy of the application was received on 26 April 2023.

2. The property is described as "a converted property which now houses 5 flats located in the town centre of Hastings."

3. The Applicant explained that works are required to install a new grade A LD2 control panel fire alarm system and new fire rated doors to comply with the conditions to a HMO licence. The Applicant states the works are urgent to ensure there is sufficient protection for the building in the event there is a fire and to adhere to the conditions of the current HMO licence. The Local Authority are threatening to prosecute for breach of HMO licence unless the works are completed promptly.

4. On 12 May 2023 the Tribunal directed the application to be heard on the papers unless a party objected within 7 days.

5. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 19 May 2023 indicating whether they agreed or disagreed with the Application. The Tribunal received responses from the leaseholders of Flats 3, 4 and 5 who agreed with the Application and indicated that they were content with a determination on the papers. The Applicant's representative confirmed that it had received no objections to the Application.

Determination

6. 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.

7. 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.

8. 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.

9. 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".

10. 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.

11. The Tribunal now turns to the facts. The Tribunal is satisfied that the works were urgent and necessary. The Tribunal accepts that the Applicants could not wait to carry out the full consultation exercise to carry out the fire safety works.

12. 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.

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

Decision

14. **The Tribunal grants an order dispensing with the consultation requirements in respect of the fire safety works in order to comply with the requirements of the HMO Licence.**

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.