



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

Case reference : **CAM/26UG/LDC/2023/0009**

HMCTS code : **P:PAPERREMOTE**

Property : **Flats 1-9 Grange Court, Grange Street, St Albans, AL3 5NE**

Applicant : **Grange Court Residents St Albans Ltd C/O Collinson Hall Limited**

Respondent : **The long leaseholders of the Property**

Type of application : **Dispensation from the consultation requirements as set out in Section 20ZA of the Landlord and Tenant Act 1985**

Tribunal members : **Mr P Roberts FRICS CEnv**

Date of Determination : **10 May 2023**

DECISION

This has been a determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper hearing described above as **P:PAPERREMOTE**. A hearing was not held and all issues were determined on the papers. The Applicant submitted a bundle. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal grants the application for retrospective dispensation from further statutory consultation in respect of “*Underpinning Works to the block below Flat No. 5*” as further described below.

The Applicant shall be responsible for serving a copy of this Decision on all of the Lessees.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable (section 27A of the Act). The Tribunal also makes no determination in respect of the liability for the cost of the works.

Reasons

Background

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (the “Act”) for retrospective dispensation from the statutory requirement to consult in respect of qualifying works that are described within an email from Mr Archer to Mr Grant dated 5 December 2022 at 18:40 (as included within the Bundle) and as costed by OBQ Ltd (St Albans) on 7 February 2023 in the sum of £15,660 + VAT
2. The work has yet to be carried out.
3. No representations have been received from any of the Lessees.
4. Before making this determination, the papers received by the Tribunal were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given the lack of any challenge.
5. **The only issue for determination is whether it is reasonable for the Tribunal to dispense with the statutory consultation requirements.**
6. **The Tribunal has not considered whether the service charge costs will be reasonable or payable, nor by whom they will be payable.**

The Law

7. Section 20 ZA (1) of the Act states:

“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.”

8. In having regard to the question of reasonableness, the Tribunal has considered the extent to which the Lessees would be prejudiced in dispensing of the requirements.
9. The Supreme Court provided guidance to the Tribunal in the application of section 20 AA (1) of the Act in case of *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (the “Daejan case”). The principles can be summarised as follows:
1. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is whether there is real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements.
 2. 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.
 3. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 4. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 5. 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).
 6. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying any “relevant” prejudice that they would or might have suffered is on the tenants.
 7. The court considered that “relevant” prejudice should be given a narrow definition; it means whether noncompliance 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.

8. 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.
9. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
10. The Tribunal has therefore applied the statutory provisions in accordance with the approach taken in the Daejan case.

Representations – The Applicant

11. The Applicant's stated grounds are:

“Qualifying works: Underpinning urgently required.

Nick Archer of Gyoury Self Partnership (St Albans) attended site on 30 November 2022. Copy of his report is attached for ease of reference.

This report was subsequently shared with the insurance company who instructed an assessor to attend site on 24 January 2022. Collinson Hall received the assessors (sic) confirmation on 7 Febraury (sic) 2023 that they would not provide any assistance in relation to the underpinning as they believed it was a historic issue.

The leaseholders/owners are obviously keen to complete the unpinning (sic) works as soon as posisble (sic), as there is also a separate project being undertaken at site for paving works and this project has had to be placed on hold due to the subsidence issues becoming highlighted. The external parts of the developemnt (sic) are in a state of disrepair as the project has had to be halted and leaseholders/owners are concerned that there is a Health and Safety issues at site, as currently it is an unsafe environment particularly as one of the leaseholder/freeholders is disabled and is reliant on wheelchair access.”

12. The Application form requires the Applicant to:

“Describe the consultation that has been carried out or is proposed to be carried out.”

13. The Applicant's response refers to attendance on site by OBQ but is silent as to the extent of any consultation.

14. Ms Hunter advised in submissions that the Lessees were served with the following documents via email and in person on 27 March 2023:

- a. *“The application form*

- b. *Any quotes for the costs of the proposed works inclusive of any professional fees and VAT and clarity exactly (sic) the extent of the works dispensation is being sought for;*
 - c. *A copy of the report from Gyoury Self Partnership following the site visit on 20 November 2022*
 - d. *These directions”*
15. It is not clear whether the reference to “*any quotes*” relates to the quote provided by OBQ Limited or something else.
16. The Applicant included a letter with the bundle which stated:
“We can confirm that no feedback has been received from leaseholders at site to all documentation which was issued to them on 27 March 2023 in relation to the proposed underpinning works at site.”
17. This letter is undated.

Representations – The Lessees

18. The Tribunal notes that the Applicant reports that they have received no observations from the Lessees.
19. In addition, the Tribunal has not received any representations from the Lessees.

Determination

20. As set out above, the Tribunal may grant dispensation “*...if satisfied that it is reasonable to dispense with the requirements*”.
21. In making its decision the Tribunal has regard to the extent to which any real prejudice has arisen to the Lessees as a result of the Applicant breaching the consultation requirements.
22. No objections or representations have been received by the Tribunal from the Lessees and it is noted that the Applicant did not receive any representations in response to its notices albeit there is no evidence in front of the Tribunal to indicate how much notice had been provided by the Landlord to the Lessees as at the date of that letter.
23. Nevertheless, the Lessees have received the Tribunal Directions and this point has not been raised in submissions. Similarly there is no evidence as to how much notice was provided by the Landlord to the Lessees but no arguments have been presented. The Tribunal has therefore not considered these points further.
24. The Tribunal therefore considers that it has not seen any evidence of prejudice arising to the Lessees.

25. The Tribunal consequently grants dispensation from the remaining consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the works carried out to the roof as more particularly described above.
26. In granting dispensation, the Tribunal makes no determination in respect as to whether any of the service charge costs are reasonable or payable.
27. The Applicant shall comply with the requirements as set out under the section headed "Decision" above.

Name: Peter Roberts FRICS CEnv

Date: 10 May 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property, and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).