



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

Case Reference : CHI/00ML/LDC/2023/0058

Property : 3 Devonshire Place, Brighton, East Sussex,
BN2 1QA

Applicant : Crimson Crescent Ltd

Representative : Sawyer & Co
katie@sawyerandco.co.uk

Respondent : M & T Al Hashimi (Basement)
Ms J C Gould (First Floor)
Ms C T Casserly (Ground Floor)
MS & JR Randell Second Floor)
Ms Sheppard (Third Floor)

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 : Judge D Whitney

Date of Directions : 11 August 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 by email on 17 May 2023.
2. The property is described as a “converted mid-terrace building of 5 units, 5 storeys.”
3. The Applicant explains that:

“Additional works have been noted now that scaffolding is up at the building. Surveyor has put forward his recommendations which we believe are outside the initial Section 20 scope. Looking for urgent dispensation to avoid additional or duplicate scaffolding costs for the leaseholders.”

We have started major works at the property (Section 20 was completed) for roof repairs due to water ingress issues. The scaffolding has gone up and the surveyor has re-attended the property. Unfortunately the issues to the rear roof slope are as such that the surveyor has recommended completely stripping and re-slating.

The current Section 20 we completed only allows for repairs and redecoration works to the main roof, rear elevation and associated areas (including the rear flat roof), but not a replacement of the rear slope. We don't feel the scope is sufficient to allow these additional works to go ahead also.

The current works are due to take 6 weeks. The surveyor ideally needs to know within 2 weeks whether we can instruct the additional roof works. We are keen to get this moving forward asap to avoid duplication in scaffold costs for leaseholders. This additional work can be funded by some of the contingency in the current contract and the additional can be covered by the reserve fund.

We have served a notice of intention alongside sending off this request for dispensation.

For the current works being carried out, the full section 20 process was completed and multiple quotes were sought. The freeholder chose to proceed with the most competitive quotation.

So works can proceed as soon as possible, avoiding likely duplication in scaffold costs to re-erect the scaffolding at a later date to carry out the more extensive works required. There isn't sufficient time to go through a whole new Section 20 process and it will be difficult to obtain comparable costs when the scaffolding is sub-contracted by the main contractor on site and they would have to give permission for it to be used by anyone else.”

4. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

DETERMINATION

The Law

5. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
6. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
7. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of Daejan Investment Limited v Benson et al [2013] UKSC 14.
8. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
9. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for

having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

10. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”

11. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
12. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
13. If dispensation is granted, that may be on terms.
14. The effect of Daejan has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

Decision

15. No leaseholder has objected. Three leaseholders being the leaseholders of the First, Second and Third Floor flats have all responded to the Tribunal confirming they have no objection to the application. No response has been received from the other two leaseholders.
16. I have considered the application form dated the 17th May 2023 and the attachments to the same. It sets out that certain roof works were being undertaken following a consultation. During the continuance of these works it became apparent further works were required to a different part of the roof which may be best conducted whilst the current scaffolding was in place and as a result there was not sufficient time to conduct a section 20ZA consultation.

17. I accept the facts set out in the application. I am satisfied that these facts prima facie are sufficient to justify making an application for dispensation from consultation requirements given the time such consultation will take. I am satisfied that it is reasonable to endeavour to undertake such works whilst the current scaffolding is in place.
18. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so.
19. I grant dispensation pursuant to Section 20ZA of the Landlord and Tenant Act 1985 from consultation subject to a condition that a copy of this decision shall be served by the Applicant upon all leaseholders at the Property.
20. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.

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
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.