



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

**Case Reference** : CHI/23UB/LDC/2023/0046

**Property** : 2 Douro Road, Cheltenham, Gloucestershire,  
GL50 2PQ

**Applicant** : Parabola Investments Limited – 2 Douro Road

**Representative** : Metro PM

**Respondent** : Mr Jason Montgomery & Ms Tess Ciocci (Flat  
1A)  
Mr Matthew Millward (Flat 1B)  
Mr David Clayton (Flat 2)  
Ms Eleanor Kirby (Flat 3)  
Mr Steven Bruce (Flat 4)

**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  
Mr K Ridgeway MRICS

**Date and Place of  
Hearing** : 11 July 2023  
Havant Justice Centre

**Date of Decision** : 18 August 2023

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**DECISION**

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## **Summary of Decision**

1. The Tribunal decides it is reasonable to grant dispensation in respect of the damp proofing works to the value of £6,750 plus VAT, and more particularly described in the email of P & S Decorators (Cheltenham) Ltd dated 28 March 2023 subject to the condition that the Applicant pay its own costs of making and pursuing the application before the Tribunal which includes the Tribunal fees and the fees of the managing agent.

## **Application**

2. 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. This retrospective application was received by the Tribunal on 17 April 2023.
3. Directions were made on 24 April 2023 and then reissued on 16 May 2023 setting out a timetable for the exchange of correspondence between the parties and the preparation of a determination/hearing bundle (should the respondents object to the application). The date for submission of the bundle was 14 June 2023.
4. The Tribunal received objections from the Respondents to the application, all of which were served upon the Applicant.
5. On 15 June 2023 the application was struck out due to the failure to provide the Tribunal with the hearing bundle. An application to reinstate the case was made on 20 June 2023. The grounds given were that the Applicant's representative attempted to send the bundle but it was not accepted by the Tribunal.
6. Judge Whitney dealt with the Application for reinstatement and noted that the representative had forwarded a screen shoot which showed an email was sent with a pdf attachment of 111MB on 14 June 2023 at 22.10. Such an email was not in compliance with the Tribunal requirements as in accordance with Rule 15 of The Tribunal Procedure Rules 2013 the Applicant should have sent the bundle by 5pm on 14 June 2023. Further the Tribunal's "Bundle Guidance" provides that if the document is to exceed 25 MB the party must contact the Case Officer to be provided with a link to up loaded the bundle. Judge Whitney decided on balance that he should reinstate the Application and directed a hearing on 11 July 2023 at 10.00am at Havant Justice Centre.
7. On 11 July 2023 Mr Henry Arnold and Mr Faraz Ahmed of Metro PM represented the Applicant Landlord. Mr Jason Montgomery and Ms Tess Ciocci (Flat 1A), Mr Matthew Millward (Flat 1B), Ms Eleanor Kirby (Flat 3) and Mr Steven Bruce (Flat 4) attended the hearing and made

representations. The parties and Tribunal Member K Ridgeway MRICS appeared by video link. The Applicant supplied a bundle of documents comprising 518 pages.

8. The property was originally built as a semi-detached Victorian Villa in the mid-19<sup>th</sup> Century. The building was refurbished and converted into flats in the late 20<sup>th</sup> Century (date unknown, possibly 1970's). There are five self-contained flats in the property, three of which are accessed from the internal common stairwell. The remaining flats (1A and 1B) in the lower ground courtyard have an independent entrance (i.e. entrance door that opens directly to the exterior of the property). The property is set within grounds which are laid out to parking and access to the front, access steps and paving to the side and a walled garden to the rear.
9. On 3 February 2022 the Applicant gave Notice of Intention to carry out major works which were described as follows:
  - Full decoration to side elevation including render repairs.
  - Replacement front entrance door.
  - Damaged floor tiles and matting in front entrance porch to be replaced.
  - Front Porch ceiling to be painted.
  - Broken glass panes to be replaced on side elevation.
  - Damp proofing of render to the two basement flats and internal repairs.
  - Additional drainage to be installed outside the basement properties and relay of concrete.
  - Flat 1b's Windows to be repaired and redecorated on rear elevation.
10. On 28 March 2022 the Applicant supplied a Notice of Estimates which gave details of three tenders. The lowest tender was from P & S Decorators (Cheltenham) Ltd which was £55,210.80 plus surveyor's fees of £1,000 and managing agents works fee of £1,656.37 making a total of £57,867.17.
11. The works were let to P & S Decorators (Cheltenham) Ltd. On 19 May 2022 the managing agent gave instructions for the works to commence on 6 June 2022 with an expected 12 week timeframe to complete the works. Unfortunately the works started late on 13 June 2022, and did not progress as planned which was due to a variety of reasons including a requirement to obtain an asbestos report, the heatwave throughout July 2022, water leaks from the conservatory and overflows, and that decoration works to the basement properties could not be completed until all causes of damp were addressed. On 11 May 2023 Mr Arnold of MetroPM attended the site, and noted that some snagging items still required addressing including the remediation of the conservatory.

12. The subject of this application concerned damp proofing works to Flat 1B which the Applicant said had not been included in the specification for the major works. The Applicant states that the costs of these works were £6,750 plus VAT. The Applicant is asking for dispensation from consultation in connection with the additional works to Flat 1B.
13. The hearing bundle included an email dated 28 March 2023 from the Managing Director of P & S Decorators (Cheltenham) Limited which described the additional works as:
  - Every tiled floor area was protected.
  - Skirting boards removed to established damp areas to the Hallway, Bedroom and Living room. Splice repairs were carried out to the Bedroom door lining.
  - 15m<sup>2</sup> plaster was hacked off right back to the brickwork.
  - Two coats of Thoroseal waterproofer were applied to brickwork surfaces.
  - Two backing coats, one finish coat of plaster were applied due to the extensive thickness.
  - 20-25m of new skirting board was provided and fitted.
  - Redecoration of the Hallway, Bedroom and Living room areas complete.
  - Every day, all areas were kept clean and clear as work proceeded and at the end of each day.
  - A final clean was carried out on completion of the works.

### **Consideration**

14. 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.
15. 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.
16. 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.

17. 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”.
18. 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.
19. The Tribunal now turns to the facts of this case. The Tribunal understands from Mr Arnold that the contractor identified the need for the additional works in November 2022, and supplied photographs of the areas requiring repair. Further Mr Arnold said that the works were completed at the beginning of 2023. The Tribunal observes that no record of these communications was in the hearing bundle.
20. The Tribunal notes that the specification for the additional works supplied in the hearing bundle is dated 28 March 2023. The Applicant stated that the costs of these additional works were £6,750 plus VAT but there appears to be no invoice in the bundle from P & S Decorators (Cheltenham) Limited substantiating this amount.
21. The Applicant supplied an estimate from H2O services dated 12 April 2023 for the works as specified in the email dated 28 March 2023. The estimate was in the sum £11,417.47 plus VAT, which was £4,667.47 more than the actual costs of the damp proofing works .
22. The Tribunal observes that the managing agent requested this estimate from H2O services in an email dated 27 March 2023 which stated that the agent was seeking dispensation in respect of an overspend on the planned maintenance works so that a demand could be issued for the overspend. The agent asked for “a desktop quote for the work to help support with our tribunal application”.

23. In response to the email of 27 March 2023 H2O services requested details of the dimensions of the area that was covered by the damp proofing works. The managing agent responded on 12 April 2023 by supplying a copy of the specification as supplied by P&S Decorators Limited and a floor plan with dimensions of Flat 1A rather than Flat 1B.
24. The Applicant supplied a copy of a “Brief Report on Additional Damp Proofing to Flat 1B” dated 27 June 2023 from a Mr John Walton, the surveyor appointed to supervise the major works project.
25. Mr Walton explained that when he drew up the specification for the works the areas of damp affected walls in Flat 1A amounted to less than one square metre in several locations and in Flat 1B even less area in two locations, one of which was on the external wall behind defective external render which was to be replaced as part of the refurbishment of the entire elevation.
26. Mr Walton then went onto state that due to various factors work took longer than anticipated. In October 2022 it became apparent from conversations with Mr Arnold that there was additional damp proofing to be carried out in Flat 1B. When Mr Walton enquired about the additional damp proofing Mr Walton was informed that he need not be involved as it was being dealt with separately. Mr Walton, therefore, took no further interest until P & S Decorators Limited asked for the cost of £ 6,750.00 plus VAT for the additional damp proofing carried out in Flat 1B to be included in their final application for payment for the contract works.
27. According to Mr Walton, the extent of the additional work amounted to approximately 18 square metres of removal of defective plaster and cutting the skirting from the affected areas and work to an existing door lining, extensive treatment of the underlying bricks, application of the damp proofing materials, plastering, supply and fitting of replacement skirting boards and repairing a section of rotting door lining and subsequent decoration of affected areas, including complete redecoration where matching existing paint colour was impossible.
28. Mr Walton opined that the need for this extensive damp proofing was a combination of several factors: the poor installation of the original damp proofing system, the excessively wet spring in 2022 and the subsequent very hot summer, resulting in efflorescence as salts in the existing structure reacted, the poor condition of the external render and poorly maintained warning pipes/condensate pipes from above. Mr Walton believed that it was not possible to attribute the cause of the water ingress in Flat1B to the defective conservatory at the rear of the building as the damp appeared in areas well away from the location of the conservatory.
29. The leaseholders have all objected to the Application. Their objections are:

- The original specification for the major works included damp proofing works to Flats 1A and 1B, and that if the costs of those works exceeded the tender sum the responsibility rests with the surveyor. The leaseholders, therefore, should not be liable for the “negligence” of the surveyor.
  - The principal reason for the deterioration of the damp problem in Flats 1A and 1B was the failure of the managing agent to ensure that the major works were completed in accordance with the original timescale of 12 weeks. The leaseholders assert that the contractor was involved in other projects at the same time which meant that there were many weeks of inactivity at the site. The leaseholders pointed out that the major works have still not been completed to a satisfactory standard nearly one year on.
  - The leaseholders, particularly those of Flats 1A and 1B have suffered considerable inconvenience from living in a building site for many months longer than was originally scheduled.
  - The managing agent did not inform the leaseholders of their potential liability for additional costs for the damp-proofing works which the leaseholders say was symptomatic of a wider failure by the agent to communicate with them about the works. The leaseholders state that the first time they learnt about the additional costs was when they received the application and directions of the Tribunal.
  - The leaseholders point out that to find another £1,000 or more for these works would cause them significant hardship.
30. The Tribunal has not been assisted in its deliberation by the manner in which the Applicant has presented its case. The Tribunal was confused by the absence of an invoice for the additional works, and by the date for the specification of the additional works which appeared to be some months after the damp proofing took place in Flats 1A and 1B. The Tribunal considers that the Applicant has not clearly set out the sequence and timing of the events giving rise to this application. Further the Applicant has complicated matters by the amount of irrelevant information supplied, a bundle of over 500 pages is excessive for this type of application.
31. The Tribunal doing the best it can on the information provided finds that around November 2022 the managing agent became aware of a wider problem with water ingress in Flat 1B. This appeared to be connected with the deteriorated roof construction of the conservatory which formed part of the demise of Flat 2. The managing agent decided not to involve the surveyor supervising the major works, presumably because the managing agent believed that the additional costs might form part of an insurance claim. The damp proofing works were carried

out in January 2023. Around March 2023 P & S Decorators Limited presented the surveyor with a bill of £ 6,750.00 plus VAT for the additional damp proofing carried out in Flat 1B to be included in their final application for payment for the contract works. It was this action that gave rise to the application for dispensation.

32. The managing agent accepts that it did not inform the leaseholders of the potential increase in the costs of works in November 2022. The managing agent's reason was that it would have had to embark on a separate section 20 consultation process because of the severe damp problems affecting Flat 1B and that would have added considerably to the costs. The Tribunal does not understand the managing agent's reasoning. In the Tribunal's view the agent would have been entitled then to have put in an application for dispensation rather than wait until April 2023. This would have had the benefits of alerting the leaseholders earlier to a possible increase in costs, and enabling the Applicant to obtain a quotation from H2O based on an actual inspection of the property rather than a contrived desk top analysis. The Tribunal notes from the Applicants' case that H2O had inspected the water damage in Flat 1B on 7 November 2022 and provided a quotation for damage to the living room.
33. The Tribunal has given serious consideration to whether the managing agent's failure to communicate earlier with the leaseholders about the potential increase in costs qualified as relevant prejudice as defined in the Supreme Court decision of "*Daejan*". The Tribunal has decided it does not.
34. In order to make a case on relevant prejudice a leaseholder has to demonstrate that the denial of consultation has increased the likelihood of a leaseholder paying for inappropriate works or paying an unreasonable amount for the works done.
35. The leaseholders assert that the works were inappropriate because they were paying extra for works that were included in the specification for the major works. In this regard the Tribunal accepts the statement of Mr Walton that the damp proofing works carried out in Flat 1B were much more extensive than that originally specified. The Tribunal is satisfied that the additional damp proofing works were necessary. The Tribunal observes that the parties differed on the causes of the more extensive damp problem in Flat 1B but that difference of view did not take away from the fact that the works had to be done. The Tribunal notes that Mr Millward at the hearing expressed his satisfaction with the standard of the damp proofing works.
36. The Tribunal finds that leaseholders had not identified salient issues they would have raised about the reasonableness of the costs of the additional works if they had been given the opportunity to consult on the proposed works. The Applicant made a persuasive point that by engaging the contractors already on site the costs of going out to tender were saved. Also the Tribunal considers that the reasonableness of the



costs of the additional damp proofing was supported in part by the desk-top quotation of H2O.

37. The Tribunal observes that the dispute about the delays to the completion of the works related more to the reasonableness of the costs of the overall programme of works including the managing agent's fees rather than the reasonableness of the costs of the additional damp proofing works in Flat 1B.
38. The Tribunal reminds the parties that it is dealing with the question of whether it is reasonable to grant dispensation from the consultation requirements. The Tribunal is not deciding on the reasonableness of the actual costs of the works which can still be challenged by the leaseholders by making an application under section 27A of the 1985 Act.
39. The Tribunal is satisfied that the leaseholders have not established a factual case of relevant prejudice to justify refusal of the application for dispensation. The Tribunal, however, is mindful of the observations in *Daejan* that the landlord is seeking the indulgence of the Tribunal to sanction its failure to comply with the consultation requirements. In those circumstances the Supreme Court suggest that the landlord should pay its own costs of making and pursuing the application before the Tribunal.

## **Decision**

40. The Tribunal decides it is reasonable to grant dispensation in respect of the damp proofing works to the value of £6,750 plus VAT, and more particularly described in the email of P & S Decorators (Cheltenham) Ltd dated 28 March 2023 subject to the condition that the Applicant pay its own costs of making and pursuing the application before the Tribunal which includes the Tribunal fees and the fees of the managing agent.

## **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.