



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

Case Reference : CHI/18UG/LDC/2023/0101

Property : The Old Watch House, Torcross,
Kingsbridge, Devon, TQ7 2TQ

Applicant : Mrs Wendy Iden

Representative : Freehold Management Services Ltd

Respondents : The Leaseholders

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 : Mrs J Coupe FRICS

**Date and Venue of
Hearing** : Determination on Papers

Date of Decision : 29 September 2023

DECISION

The Application

1. The applicant seeks retrospective 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 18 August 2023.
2. The property is described as a three-storey semi-detached building of traditional masonry construction with part rendered walls, beneath a pitched roof clad in slates. An internal staircase provides access to the upper floors, Flat 2 and Flat 3. Flat 1 and Flat 2 having separate access. Although not referred to in the applicant's description of the property, the building clearly also has a flat roof structure, part of which is the subject of this application.
3. Dispensation is sought in relation to remedial works to the roof, albeit temporary in nature, in order to prevent further water ingress.
4. The applicant stated that water is entering the building via a failed joint between the pitched and flat roof structures and that although the joint has been repaired on three previous occasions the issue has reoccurred. In order to facilitate the remedial works and to access the affected areas some ridge and roof tiles require removal.
5. The applicant stated that all leaseholders have been informed of the nature and urgency of the required works and have been advised that insufficient time is available to undertake full statutory consultation without causing further water ingress damage to Flat 4.
6. A copy of an Electrical Danger Notification issued by C.A.F Electrical Contractors Ltd and dated 11 August 2023 was provided, which indicated that the property needs to be vacated due to risk of fire.
7. On 29 August 2023 the Tribunal directed that the application would be determined on the papers without a hearing unless a party objected in writing within 14 days. No objections were received.
8. The Tribunal Directions required the applicant to immediately serve the application and Tribunal Directions on the respondents and, by 6 September 2023, to advise the Tribunal that this had been done. By the same date the applicant was directed to provide the Tribunal with contact details for all leaseholders. On 4 September 2023 the applicant confirmed compliance.
9. The respondent leaseholders were informed in the Directions issued that neither the question of reasonableness of the works, nor cost, were included in the application, the sole purpose of which is to seek dispensation.

10. The Tribunal required the respondents to return a pro-forma to the Tribunal and to the applicant by 15 September 2023 indicating whether they agreed or disagreed with the application.
11. The only response received by the Tribunal was from the applicant, in her capacity as leaseholder of Flat 4, indicating agreement to the application and to the matter being determined on the papers.
12. On 11 September 2023 the applicant confirmed that they had not received any response from the respondents.

Determination

13. 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.
14. 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.
15. 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.
16. 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”.

17. 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.
18. The Tribunal now turns to the facts. The Tribunal is satisfied that it is necessary to carry out the works to the roof joint in order to prevent further water ingress and to avoid the risk of fire. The Tribunal accepts that such work is urgent and, furthermore, the Tribunal accepts the applicant's explanation that there is insufficient time to undertake full statutory consultation. The Tribunal takes into account that there have been no objections from any respondents and no prejudice has been demonstrated or asserted.
19. On the evidence before it the Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if retrospective dispensation from consultation was granted.

Decision

20. **The Tribunal grants an order dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of remedial works to the joint between the pitched and flat roof structure and associated repairs.**
21. The Tribunal directs the applicant to supply a copy of the decision to the leaseholders and to confirm to the Tribunal that it has done so.

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.