



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

Case Reference : BIR/47UG/LDC/2023/0012

Property : 1-6 Hafren Court, Dog Lane, Bewdley,
Worcestershire, DY12 2AR

Applicant : Southern Land Securities

Representative : Together Property Management

Respondents : The Leaseholders of Nos 1-6 Hafren Court

Type of Application : An application under section 20ZA of the Landlord
and Tenant Act 1985 for dispensation of the
consultation requirements in respect of qualifying
works.

Tribunal Members : Judge T N Jackson
Mr T W Jones FRICS

**Date of Paper
determination** : 10 November 2023

DECISION

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Decision

The Tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the Works to prop the Property to prevent movement whilst investigations are carried out into possible solutions to the signs of collapse at the gable end of the Property.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Reasons for decision

Introduction

1. By application dated 4 April 2023, the Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') of the consultation requirements provided for by section 20 of the same Act.
2. The application is retrospective and relates to the need to for urgent works to be carried out to a gable wall as the Property was in danger of collapse.
3. Directions were made on 18 July 2023. Direction 6 required any Respondent who objected to the application to submit a statement to the Tribunal and the Applicant stating the reason and justification for the objection.
4. The only issue for determination is whether we should dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be payable or reasonable.

Property

5. The Property was originally two timber framed connected houses constructed circa 1690 but were later converted on several occasions into two properties, then four and now into 6 self-contained flats, two with their own front doors at ground level ground floor level with the other four over two upper floors part spanning each ground floor unit. It is unknown when the last conversion took place as there are no records held with the Council although it is considered that the conversion was over 50 years ago. There have been significant alterations to the development that would have taken place during the last century and at the time of the conversions. The Property was given a grade two listing in October 1975 and is understood to be within the Bewdley conservation area that was designated such in 1968.
6. The flats within the Property are the subject of leases. We have been provided with a copy of a Lease dated 1 February 1982 between J.A.V.G Estates Limited and John Aubrey Victor Grazebrook and Margaret Eunice Grazebrook in relation to Flat in which the Flat is demised from 24 June 1978 for a term of 99 years. The Applicant is entitled to demand service charges in relation to expenses set out under the Fourth Schedule of the Lease

Works

7. The Works are to prop the Property to prevent movement whilst investigations are carried out into possible solutions to the signs of collapse at the gable end of the Property.

Procurement Process

8. The Applicant obtained quotes, both dated 14 February 2023, one from a firm for the erection and dismantling of the propping in the sum of £8325 (excluding VAT) and a separate quote in the sum of £1641.32 (excluding VAT) which included the cost of weekly hire of the scaffolding (minimum 2 weeks hire and a daily cost thereafter) and the cost of the necessary design work. We also have a copy of an invoice dated 14 March 2023 from the second of the two firms which notes that the date of hire of the scaffolding was 14 March 2023. Copies have been provided to the Tribunal and the Leaseholders.

Consultation

9. The Applicant's agent advises that the Leaseholders have been updated on ongoing works on 30 September 2022, 7 March 2023 and 8 March 2023. The Respondents were sent a copy of the quotes and invoice as part of the Tribunal proceedings but we do not know if they were provided with them previously.

Hearing/Inspection

10. We did not consider an inspection to be necessary. Neither party requested a hearing and we determined the matters on the papers.

The Law

11. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures that landlords must follow which are particularized, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to 'qualifying works' (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250. In accordance with section 20ZA (1) of the 1985 Act, the Tribunal may dispense with the consultation requirements 'if it is satisfied it is reasonable' to do so.
12. The proper approach to the Tribunal's dispensation power was considered by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854. In summary, the Supreme Court noted the following:
 - i. Prejudice to the tenants from the landlord's breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20 ZA (1).

- ii. The financial consequences to the landlord of not granting the dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- iv. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some 'relevant prejudice' that they would or might have suffered is on the tenant. It is not appropriate to infer prejudice from a serious failure to consult.
- v. The court considered that 'relevant' prejudice should be given a narrow definition: it means whether non-compliance 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.
- vi. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- vii. Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). The more serious and/or deliberate the landlords' failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- viii. In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
- ix. The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
- x. 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 application under section 20 ZA (1).

Submissions

- 13. The Applicant's agent advised that a dispensation was required due to the health and safety aspects associated if the work was not carried out as a matter of urgency and the section 20 process had to be followed.
- 14. The Applicant's agent says that the major issue at the Property is the Gable end which was showing significant signs of collapse, which given the listed status of the building and the presence of original timber necessitated the appointment of an heritage architect.

15. Following reports of damp within flat two at the Property, investigations were undertaken, and upon removal of the internal wall finishes to expose the structure, it became apparent that the timber frame structure of the building was suffering extreme signs of rot and decay.
16. In order to stabilize the building, significant propping was introduced to the building in flats two and four to prevent any movement whilst investigation of possible solutions was undertaken. This would require liaison between the heritage architect and the conservation office as to how the wall was to be reconstructed. This may have to be back in its original manner, or it may be allowed to be rebuilt in brick work depending on the view of the conservation officer.
17. Due to the urgent nature of needing to stabilize the building, the Applicant's agent was unable to undertake a consultation exercise in relation to the propping costs. The costs of the weekly hire of the props is ongoing and the Applicant's agent states that they are unable to confirm the total costs at the date of the application as the costs were ongoing. All further works required to rectify the building will be undertaken following a consultation exercise with leaseholders. The Applicant's agent has provided a copy of a report from Chartered Consulting Engineers entitled Structural Calculations Temporary Works Design in relation to the Property dated 11 May 2023.

The Respondents

The owners of flats 2 and 6 stated they had no objection to the application for dispensation. The owner of flat 5 objected and expressed concerns regarding the uncertainty of the time it would take to establish the final costs involved as, to date, the Respondents had been provided with an estimate from February 2023 and an invoice dated March 2023. As there was no contact from the other three Respondents, in accordance with the Directions they are assumed to have no objection to the application.

Deliberations

18. We noted the objection and understand the concern regarding the uncertainty of the amount of the final cost. However, the reasonableness of the costs, which, in our opinion, would include consideration of the length of time the Works were required, need to be addressed by an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985. In considering the application for dispensation, we do not consider whether the costs are payable under the Lease or reasonable.
19. We are satisfied that it is reasonable to dispense any outstanding consultation requirements in the circumstances of the present case, for the following reasons:
 - i. The Works relate to propping an unstable gable end and are required for health and safety purposes to ensure the safety of the Property, the residents, users and passers -by.
 - ii. We do not consider that the Respondents are prejudiced or will suffer any loss of opportunity as a result of the dispensation of the statutory consultation requirements.

Determination

20. The Tribunal therefore determines that, to the extent that the statutory consultation requirements were not complied with, the consultation requirements are dispensed with in relation to the Works.
21. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Appeal

22. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson
10 December 2023