



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

Case Reference : **BIR/00CN/LDC/2023/0008**

Property : **35 St Pauls Square Birmingham B3 1QX**

Applicant : **CSI (St Pauls) Management Company Ltd**

Representative : **Centrick (Jamie Noon)**

Respondents : **(1) The leaseholders of 35 St Pauls Square listed in the Schedule to this Decision**
(2) City Spirit Investments (St Pauls) Limited

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.**

Date and place of hearing : **Paper determination**

Tribunal Members : **Judge C Goodall**
Mr V Ward BSc Hons FRICS – Regional Surveyor

Date of Decision : **22 November 2023**

DECISION

Background

1. By an application dated 16 March 2023, the Applicant (which is the freeholder and management company) seeks dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. 35 St Pauls Square Birmingham (“the Property”) is the property in relation to which the application is made. It appears to be a three storey property let on long leases to four lessees, who are the Respondents.
3. The application is in respect of the replacement of an Automatic Opening Vent (“the Vent”) in the Property. The Applicant informed the Tribunal that the Vent had failed following a routine inspection and service of the fire equipment at the Property. The Vent has now been replaced at a cost of £6,657.60 plus a management fee.
4. The Tribunal directed that the Respondents be notified of the application for dispensation. Confirmation from the Applicant that this direction had been complied with was provided to the Tribunal on 10 August 2023. Respondents were asked to complete a form indicating whether they agreed with the application, and if not to explain their reasons. The form contained an option to indicate whether any Respondent wished the Tribunal to hold a hearing to determine the application. None of the Respondents responded to the Directions or returned the form.
5. The Tribunal has determined the application as set out in this Decision. The reasons for our determination also appear below.

Law

6. The Landlord and Tenant Act 1985 (as amended) (“the Act”) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
7. Section 20 imposes another control. It limits the leaseholder’s contribution towards a service charge to £250 for payments due for “works on a building” unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for works on a building costing more than £250. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
8. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)). For qualifying works on a building not subject to public notice requirements, those procedures are set out in Schedule 4 of those regulations.
9. To obtain dispensation, an application has to be made to the Property Chamber of the First-tier Tribunal who may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).

10. The Tribunal's role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works, but to decide whether it would be reasonable to dispense with the consultation requirements.
11. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.
12. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

The Works

13. The justification for the application provided by the Applicant is as follows:

“The automatic opening vent (AOV) linked to the fire alarm has failed and requires replacement without delay to maintain fire safety at the development” (“The Works”).
14. Two quotations for the Works were copied to the Tribunal. The first was for £5,548.00 plus VAT and a managing agents on-cost at a rate of 13% of the contract price, totalling £7,378.84. The second was for £6,288.00 plus VAT and a management fee, totalling £8,363.04.
15. On 11 July 2023, the managing agents accepted the lower quote. We understand that the Works have now been carried out.

Discussion

16. The Tribunal's task is to determine whether to grant dispensation from the consultation requirements. Broadly, we should grant dispensation unless to do so would result in leaseholders suffering prejudice.

17. No leaseholders have responded to this application, and we cannot see that any are likely to have suffered prejudice as a result of not being consulted on the Works. Accordingly, we grant dispensation from consultation for the Works.
18. Our decision does not preclude any Respondent from applying for a determination that the cost of the Works was not reasonably incurred or not of a reasonable standard under section 27A of the Act. This determination only deals with whether the consultation requirements in the Act have been complied with.

Appeal

19. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall

First-tier Tribunal (Property Chamber)

Schedule of Respondents

McDiamond Property Ltd – Apt 1

Mr T O Baldwin – Apt 2

Mr B Simpson – Apt 3

Dingchao Zhou – Apt 4