



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

Case reference : **CHI/18UG/LDC/2023/0089/AW**

Property : **Seymour House, Bridgetown, Totnes,
Devon TQ9 5AA**

Applicant : **Seymour Court (Totnes) Management
Company Limited**

Representative : **Carrick Johnson Management Services
Ltd blocks@carrickjohnson.com**

Respondent : **The Leaseholders of Seymour House,
Bridgetown, Totnes, Devon TQ9 5AA**

Type of Application : **Application for the dispensation of
consultation requirements pursuant to
S.20ZA of the Landlord and Tenant Act
1985**

Tribunal Members : **Judge Hugh Lumby**

Venue : **Paper determination**

Date of Decision : **27th September 2023**

Date of issue : **13th October 2023**

DECISION

Decision of the Tribunal

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

The background to the application

1. The property is a block of 26 flats situated on the east bank of the River Dart in Totnes. It was formerly the Seymour Hotel, with parts dating from the about 1810, which was converted into 26 flats in the 1980s. It is Grade 2 Listed.
2. The two adjoined main blocks contain a total of 19 flats, and their river facing elevations are located within a minimum of about 3 metres and maximum of about 7 metres from the river's edge. The property is protected by a river wall approximately 3 metres high and 53 metres long, with stone steps to the riverbed located about half way along.
3. The river is tidal at this point with a typical rise and fall of about 3 metres. The river can also rise suddenly after heavy rains over Dartmoor. In 1992 a large section of the river wall collapsed and was rebuilt at great expense. As a result the wall is now periodically subject to detailed inspection by a specialist engineer.
4. The Tribunal did not inspect the property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
5. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are the Applicant's application, the specimen lease provided with it, plus the Tribunal's Directions dated 9 August and 25 August 2023, the contents of which we have recorded.
6. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4).
7. The request for dispensation concerns urgent works to repair a hole at the base of the stone steps in the river wall to avoid that wall collapsing again.
8. The application is said to be urgent, as the works should be carried out before the winter to avoid the risk of more serious erosion.

9. The works in question are referred to in survey report prepared this year by a specialist consultant engineer, Mr Simon Blackler of Nicholls Basker & Partners (Teignmouth). A copy of the report has not been provided to the Tribunal but its recommendations were summarised in the application. The report provides:

“Directly below the second to seventh upper steps, there is a section of the previous stone protection to the base of the outer wall which has substantially eroded. This appears to have removed some of the lower stones to the face of the wall. There is a slight hole beneath the ninth step approximately 500mm above the rip-rap which requires fillin [sic] with some open jointing to the adjacent stonework. We generally recommend that, where the localised collapsed has occurred at the base of the wall, it should be reinstated with concrete following [sic] excavation to the base of the wall and stonework shoud [sic] be reinstated over the concrete”

Mr Blackler has provided a very rough estimate of the overall recommended works of around £60,000 and has estimated that the works for which dispensation is sought will cost around £10,000 to £15,000. It is anticipated that the remaining works will be the subject to a section 20 consultation in due course.

10. The report states that the work requires a specialist contractor who will have to obtain permissions from the Harbour Authority. It is understood that there are only two contractors in South Devon who are likely to be able to do the work. It is therefore unlikely that leaseholders will be able to nominate additional contractors from whom to obtain quotations.
11. Section 20ZA relates to consultation requirements and provides as follows:

“(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

*(2) In section 20 and this section—
“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

....

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

7. Whilst no consultation has been carried out, the leaseholders have been made aware of the application to seek dispensation and ten have purportedly responded giving agreement. No objections have been provided to the Tribunal. In addition, the Applicant is owned by the leaseholders of the property; its board of directors consists of six of the 26 leaseholders, that board supported this application at its meeting on 20 July 2023.
8. By Directions of the Tribunal dated 9 August 2023 it was decided that the application be determined without a hearing, by way of a paper case.

The issues

9. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

Findings

10. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows.
11. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
12. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

13. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
14. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: [L11] [SEP] [SEP] “Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
 - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
17. The Tribunal is of the view that, taking into account that there has been no comments or objections from the leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the urgent works to repair a hole at the base of the stone steps in the river wall to avoid that wall collapsing again, as set out in the application.
18. The Tribunal was mindful of the fact that the works proposed to be undertaken by the Applicant are supported by a consultant engineer’s report.

19. The Applicant believes that the works are urgent to ensure that they are carried out before the winter season, to prevent further erosion. In addition, it argues that the lack of specialist contractors available to do the work make a consultation unlikely to be meaningful in any event. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.

20. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

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.