



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

Case reference : **CHI/29UL/LDC/2023/0159**

Property : **The Yews, Julian Road, Folkestone,
Kent, CT19 5HW**

Applicant : **The Yews Folkestone Company Limited**

Representative : **Kevin John Philpott**

Respondent : **Alan Suggett – Flat 1
Catherine Susan Yeung – Flat 2
Joanne Claire Smith – Flat 3
Anthony Philip White – Flat 4
Trevor Wayne Carey – Flat 5
Kevin John Philpott - Flat 6**

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 : **13^h December 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 purpose built block of 6 flats.
2. The Property has sustained storm damage to the roof on 2 November 2023, which has caused water damage to individual flats, one of which (Flat 6) is currently uninhabitable. Although a temporary solution has been effected, the Applicant wishes to proceed with the works urgently to prevent the risk of any further damage and to allow the leaseholder of Flat 6 to move back in to his flat.
3. The proposed works are described as:
 - Removal of damaged fibre glass roof covering, laying of new fibre glass roof covering and roof resin, and application of top coat
 - Removal of water damaged roofing boards and installation of new OSB3 roofing boards
 - Removal of damaged lead flashing to roof and installation of new lead flashing
 - Removal of damaged roofing tiles and installation of new tiles
 - Installation of gutter section to right side of roof
 - Removal of all rubbish from site.
4. A section 20 consultation process is being conducted by the Applicant, running from 23 November 2023 to 22 December 2023. This has invited the leaseholders to make written observations in relation to the proposed works, including proposing potential contractors for the works. However, the Applicant wishes to obtain dispensation from the consultation process to allow the works to proceed at the earliest opportunity, utilising an existing known contractor. That contractor has already carried out the temporary remedial solution to prevent further water ingress.
5. The works are said to be urgent to prevent further damage occurring and to allow the leaseholder of Flat 6 to move back in.
6. Whilst the ongoing consultation has not yet been completed, the leaseholders have been made aware of the application to seek dispensation and two have purportedly responded giving agreement. No objections have been provided to the Tribunal. In addition, the Applicant is controlled by the leaseholders of the property; its board of directors agreed on 22 November 2023 to complete the works at the earliest opportunity and to proceed with an existing known contractor. All of the leaseholders of the Property are directors of the Applicant.

7. By Directions of the Tribunal dated 28 November 2023 it was decided that the application be determined without a hearing, by way of a paper case.
8. 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.
9. This has been a paper determination which has been consented to by the parties. The documents that were referred to are the Applicant's application, the six leases provided with it, plus the Tribunal's Directions dated 28 November 2023, the contents of which has been recorded.

The issues

10. 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.

Law

11. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") 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. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
14. 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.

Findings

7. 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.
8. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: ^[111]_[SEPSEP] “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.

Consideration

17. 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.
18. The Tribunal is of the view that, taking into account that there have 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 the roof of the Property.
19. The Applicant believes that the works are urgent to ensure that there is no further damage and to allow the leaseholder of Flat 6 to move back into his flat. 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.
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.