



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

Case Reference : CHI/21UD/LDC/2023/0140

Property : 29 Southwater Road, St Leonards On Sea,
East Sussex, TN37 6JR

Applicant : St Peters Mews Limited

Representative : Barretts Law

Respondent : Theresa Forde (Ground Floor Flat)
35 Tower Road Limited (Basement Flat)
35 Tower Road Limited (First and Second
Floor Flat)

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 : Judge J Dobson

Date of Directions : 15th December 2023

DECISION

Summary of the Decision

1. **The Applicant is granted 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 in respect of major works, being the clearing of the garden to the Property, internal clearance of the Ground Floor Flat and electrical works. The Tribunal has made no determination on whether the costs of the works are payable by the Respondent or whether, if they are payable, the sums are reasonable.**

The application and the history of the case

2. The Applicant applied by application dated 6th November 2023 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act. The Applicant made a separate application under Section 168 of the Commonhold and Leasehold Reform Act 2002, that is to say in respect of breach of covenant, in relation to the Ground Floor Flat, as described.
3. The Tribunal gave Directions on 10th November 2023, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements. The Tribunal highlighted that it would not be making a determination as to individual leaseholders’ liability, nor answering the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
4. The Directions further stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the directions. None did. Having considered the application further and prior to undertaking this determination, the Tribunal is satisfied that a determination on the papers remains appropriate.
5. This the Decision made on that basis and following a paper determination.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”
12. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
13. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
14. If dispensation is granted, that may be on terms.
15. There have been subsequent decisions of the higher courts and tribunals of assistance in the application of the decision in *Daejan* but none are relied upon or therefore require specific mention in this Decision.

Consideration

16. It is said in the application that the Property consists of 3 flats, which given their descriptions the Tribunal perceives to be arranged across 4 floors. There is no other clear information about the Property.

17. The Applicant explains the position as to the works involved in some detail, as set out in the Directions.
18. It is firstly said that the garden is in the sole demise of the Ground Floor Flat but there has been a failure to maintain it such that there is now a tree growing in the garden that is starting to cause structural issues to the building. The works planned to be carried out is the complete garden clearance. The estimated cost is in the region of £2,500.
19. Secondly, it is said that the lessee of the Ground Floor Flat is not in occupation but has left the flat in a terrible state and has been hoarding goods. There is said to be a rat infestation and it is asserted that the electrics are being damaged. The internal clearance and the electrical works have been estimated at £2,950.
20. The first stage of consultation has been undertaken but it is asserted that it will take too long to complete the process and that structural damage may be caused to the Property. No specific evidence in support of that contention is provided. It is not clear whether the internal works were included in the partial consultation process.
21. The reason why dispensation from consultation requirements is said to be required is that the tree needs to be removed as a matter of urgency “and it is believed that the consultation process will simply take too long”.
22. The Lease of Ground Floor Flat dated 26th September 1988 has been provided with the application (“the Lease”), together with the leases of the other Flats. The Tribunal has considered the Lease.
23. The demise to the Ground Floor Flat does indeed include the garden. The Applicant and the lessee of Ground Floor Flat have various obligations under the Lease. Clause 3 requires the lessee to permit the Applicant to enter in order to repair the building and pipes, cables and the like and also to view the demised premises.
24. There has been no response from any of the Lessees opposing the application. The only response agrees that dispensation should be granted. The email address given for them is the same as that given in the application form for the Applicant from which the Tribunal surmises that they have links to the Applicant, whether a shared director or otherwise. Nevertheless, the lessees are a separate legal entity.
25. There has been no reply on behalf of the lessee of the Ground Floor Flat.
26. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the additional time taken.

27. That is particularly significant here where the basis for the proposed works is explained adequately for these purposes, if no more than adequately, but the basis for those works being urgent, especially to the garden, is not well explained and not otherwise obvious. If the test to be applied were a different one, the Applicant might well experience greater difficulties. However, as identified above, the test is one of prejudice as formulated.
28. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
29. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building.
30. The Tribunal has considered carefully whether the grant of dispensation should be made subject to any conditions. On balance, the Tribunal has determined that in the absence of any argument from a Respondent as to why a condition may be appropriate, notwithstanding the matters referred to above, on balance the Tribunal does not consider that conditions ought to be imposed.
31. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
32. The Tribunal also makes clear that it has made no determination that the Applicant is entitled to undertake the garden clearance works or is entitled to access the garden in order to undertake such works. The grant of dispensation for consultation should in no way be taken as any indication about that matter.
33. Further, the Tribunal makes clear that it has made no determination that the Applicant is entitled to undertake any works internal to the Ground Floor Flat or is entitled to access that flat in order to undertake such works. The grant of dispensation for consultation should also in no way be taken as any indication about that matter.
34. As no representations have been received as to entitlement of the Applicant to undertake the works or to obtain access for that purpose, the Tribunal, with some caution, refrains from comment on the answer in respect of those matters.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case by email at 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.