



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

**Case Reference** : CHI/43UF/LDC/2023/0134/AW

**Property** : 34 Upper Bridge Road Redhill Surrey RH1  
6DD

**Applicant** : Perimeter Properties Limited

**Representative** : TWM Solicitors LLP

**Respondent** : The Leaseholders

**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 N Jutton

**Date of Determination** : 21<sup>st</sup> November 2023

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**DECISION**

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## **Summary of the Decision**

1. **The Applicant is granted dispensation on terms under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works to be carried out repairing a retaining wall running along the boundary of the Property where it meets Linkfield Street (the Wall), including the demolition and reconstruction of parts of the Wall the installation of a ground anchor system and associated and ancillary works.**

## **The application and the history of the case**

2. The Applicant applied for 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 proposed works to repair a retaining wall running along the boundary of the Property where it meets Linkfield Street to include the demolition and reconstruction of parts of the wall and the installation of a ground anchor system together with associated and ancillary works (the Works). The application didn't seek to dispense with the consultation requirements entirely but instead sought effectively to amend them by reducing the "relevant period" (as defined in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations)), by which the Respondents were able to reply to notices served from 30 days to 5 days or such other period as the Tribunal thought fit.
3. The Tribunal gave Directions on 10 November 2023, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and not the question of whether any service charge costs are reasonable or payable.
4. The Directions provided that if any of the Respondents wished to object to the application they should do so in writing by 17 November 23. No objections have been received, indeed the lessees of flats 1 3 5 7 8 and 11 have signed a letter consenting to the application.
5. Following a case management application made by the Applicant the Tribunal made an order allowing the Applicant to vary its substantive application so as to provide that the Applicant sought dispensation on further terms that it need produce only one estimate for the cost of that part of the Works relating to the installation of a ground anchor system and various estimates for other elements of the Works (as opposed to estimates to cover the entirety of the Works).

## **The Law**

6. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service

charge year 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. The effect of *Daejan* has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177

(LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

## **Decision**

16. The Applicant is the freeholder of the Property. The Property is a purpose built block of 11 flats. The flats are held by the Respondents under the terms of long leases. The Applicant seeks to carry out certain works to the Property, which are described as urgent. It will seek to recover the cost of those works from the Respondent leaseholders as part of the service charge paid by them. This decision does not address the question of whether or not such costs are recoverable under the terms of the lease as service charges nor, if so, if such charges would be reasonably incurred. As has been made clear in Directions made by the Tribunal this decision is limited to addressing whether the Applicant should be granted dispensation from the consultation requirements that are required in respect of the Works by section 20 of the Landlord and Tenant Act 1985 given that it is anticipated that the service charge contribution that the Applicant will see from the Respondents in respect of the cost of the Works will in each case exceed £250.
17. No leaseholder has objected to the application.
18. The proposed the Works are described by the Applicant as works to repair a retaining wall running along the boundary of the Property where it meets Linkfield Street (the Wall) including the demolition and reconstruction of parts of the Wall and the installation of a ground anchor system together with associated ancillary works. It is, applicant says, urgent that the works are carried out as soon as possible because the wall is leaning substantially and at risk of collapse. As such the wall poses a risk to any party in proximity to it.
19. The Applicant says that it has served a Notice of Intention to Carry Out the Works (the first step of the consultation process) which it served on the Respondents on 5 October 2023. The Applicant doesn't seek dispensation from the consultation requirements in their entirety. It instead seeks dispensation on terms that the 'relevant period' to be stated in all consultation notices be reduced to 5 days (or such other period as the Tribunal thinks fit), that it need produce only one estimate in respect of that part of the Works for the installation of a ground anchor system and can produce various estimates for the other elements of the Works (as opposed to estimates to cover the entirety of the Works).
20. In my judgment it is just and equitable to grant dispensation to the Applicant for the Works on terms. I bear in mind that there has been no opposition filed to this application and that the Works are required to

be undertaken for reasons of health and safety as a matter of some urgency. No evidence has been adduced to the Tribunal that the Respondents would suffer prejudice by reason of dispensation being granted and the statutory consultation process not been followed in its entirety as set out in the Regulations. I am satisfied that dispensation from the consultation requirements should be granted on terms that the consultation process be carried out but modified to provide that the 'relevant period' (as defined above) in respect of notices served be reduced to 5 days, that in respect of that element of the Works described as the 'installation of a ground anchor system' only one estimate need be obtained and in respect of the balance of the Works the Applicant may produce separate estimates for different elements thereof (as opposed to estimates that cover the entirety of the Works).

21. As stated, In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however direct that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.
22. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.

Judge N Jutton

21 November 2023

## **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 [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being the Regional office which has been dealing with the case.
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

