FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**BIR/00FK/LDC/2023/0023**
Properties	:	**Flats 231, 239, and 241 Wiltshire Rd, Derby DE21 6FE**
Applicant	:	**Derby Homes Ltd**
Representative	:	**None**
Respondent	:	**Mr Stephen Moore** **Mr Shane Dowsey** **Mr Geoffrey Sutcliffe**
Representative	:	**None**
Type of application	:	**An application under section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of the consultation requirements in respect of qualifying works**
Tribunal member	:	**Judge C Goodall** **Mr V Ward, FRICS - Regional Surveyor**
Date and place of hearing	:	**Paper determination**
Date of decision	:	**19 January 2024**

DECISION

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Summary

The Tribunal **determines** that the Application for dispensation from consultation is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 in respect of the carrying out of the Works identified in paragraph 3 below.

Background

1. The Applicant has applied for a decision by this Tribunal that it may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of works to the Property ("the Application"). These legal provisions are explained in more detail below.

2. The Properties are three of twelve flats in a purpose built block of flats being flat number 221 to 243 (odd numbers only), Wiltshire Rd, Derby ("the Block").

3. The Applicant says that following a dis-repair case investigation to one of the properties in the block it was found that due to the low pitch on the roof and its initial design and erection the roofing felt across large areas of roof space had deteriorated extensively. Repair works ("the Works") were required in order to reinstate the roof satisfactorily. They comprised a full replacement of felt, lathes and tiles to the entire block.

4. It appears that due to urgency, the Applicant contracted for the carrying out of the Works in August 2023. This is therefore an application for retrospective dispensation.

5. The Applicant would normally expect to recover the costs incurred in carrying out the Works from the leaseholders at the Properties under the service charge provisions in their leases. The leaseholders include the three Respondents in this case.

6. Unless there is full compliance with the consultation requirements, or a dispensation application is granted, the Applicant is prevented by law from recovering more that £250.00 from each Respondent. Therefore it has made the Application, which was dated 5 September 2023.

7. Directions were issued requiring the Applicant to serve the Respondents with full details of the Works and explaining why it had decided to seek dispensation rather than carry out a full consultation.

8. The Respondents were all given an opportunity to respond to the Application and make their views known as to whether the Tribunal should grant it. The Tribunal received responses from two leaseholders; Mr S Moore sent a response dated 28 November 2023 whilst Mr S Dowsey sent a response to the Tribunal (though not on the form sent to be used

for responses) dated 3 December 2023. Neither Mr Moore nor Mr Dowsey required an oral hearing. No other Respondent replied.

9. The Application has been referred to the Tribunal for determination. This is the decision on the Application.

Law

10. 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).

11. Section 27A of the Act provides a tenant who is concerned about the level of service charges being demanded, perhaps because that tenant believes the charges have not been reasonably incurred or that they are not of a reasonable standard, to make an application to this Tribunal for that question to be determined. The Tribunal then has power to determine that the service charges demanded are not payable.

12. Section 20 imposes an additional control. It limits the leaseholder's contribution towards a service charge to £250 for works, 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 either works on the building or other premises costing more than £250. The two options are: comply with "consultation requirements" or obtain dispensation from them. Either option is available.

13. 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)).

14. To obtain dispensation, an application has to be made to this Tribunal. We may grant it if we are satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).

15. 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.

16. 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; if so, 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.

17. The Tribunal may impose conditions on the grant of dispensation. Commonly, a Tribunal might require that the landlord should pay the leaseholders costs of seeking dispensation.

18. 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 Application

19. We have identified in paragraph 3 above the general reason for the need to carry out the Works and the extent of them. In additional documents provided to the Tribunal, we have been informed that the Applicant obtained three quotations for the Works, ranging from £34,792.80 to £43,433.46. We have also seen photographs of some elements of the disrepair. Further correspondence we have seen clarifies that the Applicant's view was that full re-roofing was required rather than patch repairing.

20. Mr Moore's objection identified that since 2019 numerous roof issues had been reported and he felt reluctant in paying for a replacement roof in full when this had possibly been required back in 2019. He was of the opinion that the freeholders should be responsible for the cost of the roof. The property is sub let and Mr Moore provided a letter from his tenant which provided evidence of the roof issues experienced.

21. Mr Dowsey objected to the application and stated that he worked nights and the work was disruptive to sleep. However, he said the work should have been carried out years ago. He pointed out that the roof affected was not directly above his flat.

The leases

22. The Applicant has provided copies of the Respondent's leases to the Tribunal. We are satisfied that they require the Applicant to maintain the structure and roof of the building in which the flats owned by the Respondents are located, and that the Respondents have an obligation to pay a fair proportion towards the costs of carrying out that maintenance (subject to any determination otherwise by the Tribunal under section 27A of the Act).

23. We note that dispensation is requested in respect of only three lessees in a twelve flat block, and we therefore presume that the other nine flats are let by the Applicant on short term leases. We therefore work on the basis that the Applicant will be paying the cost attributable to the flats not

Discussion and decision

24. From what we have seen, it is evident that some work on the roof was necessary, but we are not, in this decision, making a determination of the reasonableness of carrying out the Works.

25. The Tribunal however accepts the rationale for making the Application. The grant of dispensation is likely to be at a lower cost and obtained more speedily than carrying out the processes of full compliance with section 20 of the Act. Although Mr Moore and Mr Dowsey objected, their objections did not relate to the question of prejudice arising from not carrying out a full section 20 consultation. Neither considered that the works weren't needed but were more concerned with the fact that works should have been carried out before and who would pay for them, both matters for a section 27A application. Our view is that none of the Respondents have raised any valid suggestion of prejudice arising from the grant of the application.

26. We **determine** that the Application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the carrying out of the Works.

27. This decision does not operate as a determination that any costs charged to any Respondent for the cost of the Works are or would be reasonably incurred. They may well have been, but that is a different issue, and the Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

Appeal

28. 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
Chair
First-tier Tribunal (Property Chamber)