FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EY/LDC/2023/0049**
Property	**:**	**Dales View Apartments, 340 Queens Promenade, Bispham, FY2 9AB**
Applicant	**:**	**Grey GR Limited Partnership**
Applicant's Representatives	**:**	**Initially Principle Estate Management LLP and thereafter JB Leitch Solicitors**
Respondents	**:**	**The Residential Long leaseholders at the Property**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 20ZA**
Tribunal Members	**:**	**Judge J.M.Going** **J.Gallagher MRICS**
Date of Decision	**:**	**22 January 2024**

DECISION

The Decision

Any remaining parts of the statutory consultation requirements relating to the bay-roof works which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 11 October 2023 ("the Application") the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of works required to the bay-roofs at the property ("the additional bay-roof works").

2. The Tribunal issued Directions on 1 November 2023 confirming that it considered that the Application could be resolved on submission of written evidence leading to an early determination, but that any of the parties could request an oral hearing. None have done so.

3. The Applicant, initially acting through its managing agent Principle Estate Management ("Principle") and after the issue of the Directions through its solicitors JB Leitch ("JBL"), provided a bundle of documents including a statement of case, copies of the Applicant's registered freehold title, a sample lease, letters sent by Principle to each Respondent ("Flat Owner") dated 28 March 2019 and the invoice for the additional bay-roof works. JBL confirmed that, in accordance with the Directions, copies of the documents were at the same time sent to each to each Flat Owner.

4. None of the Flat Owners has indicated to the Tribunal any objection to the Application.

5. As is confirmed in the Applicant's statement of case the costs of the additional bay-roof works were (with other service charges) the subject of a separate application under section 27A of the 1985 Act brought by one of the Flat Owners which was determined by the Tribunal under the case reference MAN/00EY/LS C/2022/0063 on 10 August 2023 ("the 2023 Service charge Case").

6. In the 2023 Service charge Case Judge Rimmer made the following observation "There remains one matter outstanding in the 2019 accounts referred to …. above. The Applicant challenges an amount payable for work that would fall within the provisions of Section 20 Landlord and Tenant Act 1985 and have required an appropriate consultation exercise to have been undertaken. Counsel for the Respondent suggested that an application for dispensation with the process should have been forthcoming. The Tribunal explored with the parties the prospect of proceeding with that application now, but it was clear that *[the leaseholder]* was uncomfortable with that suggestion and the Tribunal agreed that it would be inappropriate in the circumstances to proceed without him first seeing a written application to

which he would have time to prepare a response should he wish to provide one. This matter will be considered separately."

The facts and background to the Application

7. The property ("Dales View") was formerly a small hotel which has since been converted into six apartments. It is typical of the Blackpool seafront accommodation of the late 19th or early 20th century. The roof is made up of interlocking clay tiles, and the walls are brick rendered with double fronted two-storey bay windows to the front elevation. There is accommodation on four floors.

8. Dales View has not been inspected in respect of this Application, but Mr Gallagher was a member of the Tribunal which decided the 2023 Service charge Case and inspected it on 18 July 2023.

9. It is understood, from the sample Lease which has been provided, that each Flat Owner owns an apartment within Dales View under a 125-year term lease and is due to pay through the service charges a share of (inter alia) the costs of maintaining, repairing, replacing and remedying any inherent defect in what are referred to as "the Retained Parts" and which include "the main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load bearing walls, the structural timbers, the joists and the guttering…".

10. It is explained in the Application and subsequently in the Applicant's statement of case that "In 2019, the Applicant instructed works to take place to the external property that included:
a. Full removal of all timber supports and installation of UPVC soffits;
b. Full removal of all guttering and fascia; and
c. Installation of fascia cladding and all new guttering.
My Rental Solutions Ltd were instructed by the Applicant to carry out the above works, and a full consultation was carried out by the Applicant with the leaseholders in respect of those works" (which for ease of reference are hereinafter referred to as "the original works").
"However, during the carrying out of the works listed … above, the Applicant was made aware by My Rental Solutions Ltd that further works were required to the bay roofs at the front of the property which had been allowing water to pour into a number of properties causing resultant damage. The Applicant became aware that the further works required were as follows:
- Rebuild the scaffold to a lower level to work on the 2 bay roofs.
- Completely strip off the old roof covering and boards from both bay roofs. Insulate and board with interlocking OSB Smartply.
- Apply timber perimeter battens all around both roofs and install GRP fibreglass edge trims. Adhesive together with a polymer sealant. Laminate the corners and joints with fibreglass.
- Fibreglass the main roof surface with Scott Bader crystic resin and fibreglass chopped strand matting to create a GRP fibreglass deck.
-Sand the surfaces and corners down and grey resin topcoat.
- Remove all rubbish from site." ("the additional bay-roof works").

"On an urgent basis, and whilst the scaffolding remained in situ in relation to *[the original works],* the Applicant decided to instruct My Rental Solutions to carry out *[the additional bay-roof works].* My Rental Solutions provided a quote for the *[the additional bay-roof works]* in the sum of around £3,500 plus VAT and were instructed by the Applicant on that basis. The actual costs of *[the additional bay-roof works]* was £3,900 plus VAT (£4,680 including VAT).... The Applicant instructed *[the additional bay-roof works]* on an urgent basis to prevent further damage to the residential apartments (which was in the interests of the residential tenants) and considered that it would be more cost effective to instruct the contractor who was already on site carrying out works, and who had already erected scaffolding on site. The Applicant made the decision-against carrying out a formal consultation under section 20 Landlord and Tenant Act 1985 on the basis that if they did, the amount of time taken to do so could have resulted in the scaffolding having been taken down upon completion of the *[original works],* necessitating the further costs of scaffolding which would be payable by the leaseholders.
On 28 March 2019, Principle issued a letter to the leaseholders which set out the urgent need for *[the additional bay-roof works]*, and the anticipated cost (£3,500 plus VAT). The letter made reference to the decision having been taken to make an application to the First-tier Tribunal for dispensation of the consultation requirements in relation to *[the additional bay-roof works].....* However, it has become apparent that the application was not lodged with the First-tier Tribunal at the time so Principle, on behalf of the Applicant, have made a retrospective section 20ZA application to the Tribunal dated 11 October 2023".

11. None of the evidence has been disputed.

12. The Tribunal's Directions confirmed that any Flat Owner who opposed the Application should, within the stated timescale, send to the Applicant and to the Tribunal any statement they might wish to make in response.

13. None have done so, and the Tribunal convened on 22 January 2024.

The Law

14. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual leaseholder in respect of a set of qualifying works.

15. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4-stage process: –

- Stage 1: Notice of intention to do the works

Written notice of its intention to carry out qualifying works must be given to each leaseholder and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting leaseholders to make observations and to

nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

The Landlord must seek estimates for the works, including from a nominee identified by any leaseholder or the association.

- Stage 3: Notices about estimates

The Landlord must supply leaseholders with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by leaseholders and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

The Landlord must give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the leaseholders' nominee.

16. Section 20ZA(1) states that: –

"Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works… the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

17. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* (a full copy of which was exhibited by JBL*)* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements which are part and parcel of a network of provisions, is to give practical support is to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation are not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;

- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

18. The Tribunal began with a general review of the papers, to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of its procedural rules permits this provided that the parties give their consent (or do not object when a paper determination is proposed).

19. None of the parties have requested an oral hearing and having reviewed the papers, the Tribunal is satisfied that this matter is suitable to be determined without a hearing. The documentation, which has not been challenged, provides clear and obvious evidence of the contents and the relevant facts, allowing conclusions to be properly reached in respect of the issues to be determined.

20. Before turning to a detailed analysis of the evidence, the Tribunal reminded itself of the following considerations: –
- The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
- In order to grant dispensation the Tribunal has to be satisfied only that it is reasonable to dispense with the requirements: it does not have to be satisfied that the landlord acted reasonably, although the landlord's actions may well have a bearing on its decision.
- The Application does not concern the issue of whether or not service charges will be reasonable or payable. The Flat Owners retain the ability to challenge the costs of the additional works under section 27A of the 1985 Act.
- The consultation requirements are limited in their scope and do not tie the Applicant to follow any particular course of action suggested by the Flat Owners, and nor is there an express requirement to have to accept the lowest quotation. As Lord Neuberger commented in *Daejan* "The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are done by, and what amount is to be paid for them".
- Albeit, as Lord Wilson in his dissenting judgement in the same case also noted "What, however, the requirements recognize is surely the more significant factor that most if not all of that amount is likely to be recoverable from the tenant."
- Experience shows that the consultation requirements inevitably, if fully complied with, take a number of months to work through, even in the simplest cases.

- The Office of the Deputy Prime Minister in a consultation paper published in 2002 prior to the making of the regulations explained "the dispensation procedure is intended to cover situations where consultation was not practicable (e.g. for emergency works)…."

21. Applying the principles set out in *Daejan* the Tribunal has focused on the extent, if any, to which the Flat Owners have been or would be prejudiced by a failure by the Applicant to complete its compliance with the consultation requirements.

22. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the Flat Owners beyond the obvious facts of not having been consulted, or of having to contribute towards the costs of works.

23. The Tribunal finds no evidence of any actual relevant prejudice: it is clear that the Flat Owners were aware of the initial works, and where it has been confirmed there was prior statutory consultation; and there is no evidence that any dispute or have disputed the need for the additional bay-roof works.

24. The Tribunal is satisfied that Applicant has made out a compelling case that the additional bay-roof works were necessary, appropriate, and as a consequence of the leaks, urgent.

25. The Tribunal accepts that to have delayed such works would have been potentially prejudicial to the Flat Owners, the occupiers, and any visitors to those flats most immediately affected, in terms of their health, safety and comfort.

26. The Tribunal is not surprised by the lack of any objection to the Application. The potential adverse cost consequences of delaying the completion of the additional bay-roof works to allow for the consultation requirements to be fully worked through, once their need became apparent and whilst there was still the benefit of having scaffolding on site, is likely to have been clear to all.

27. In the absence of any written objections and having regard to the steps that were taken, the Tribunal has concluded that the Flat Owners will not be prejudiced by dispensation being granted.

28. To insist now on the completion of the consultation requirements would be otiose.

29. For these reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements unconditionally.

Tribunal Judge J Going
22 January 2024