



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

Case Reference	: CHI/24UC/LDC/2023/0174
Property	: Laureldene, 28 Chapel Street, Petersfield, Hants, GU32 3DZ
Applicant	: Melanie Rowe
Representative	:
Respondent	: David Graver – Flat 1 Melanie Rowe – Flat 2 Steven Watts – Flat 3
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	: D Banfield FRICS, Regional Surveyor
Date of Decision	: 1 February 2024

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Repair works to “Complete roof replacement including new felt (no felt currently) battens and new tiles, barge boards, soffits, fascias and guttering. To replace missing rafters & remove chimney below ridge line”

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

1. The Applicant seeks 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. The application and supporting documents were received in 3 emails on 17 December 2023.
2. The Tribunal notes the Applicant has stated that the leaseholder in Flat 3 agrees with the application and does not wish to be named in the application. An Order for dispensation affects all leaseholders at the property, therefore the application must be served upon all the leaseholders.
3. The property is described as,

“VICTORIAN HOUSE CONVERTED INTO 3 FLATS
Flat 1 - 2 bedroom Flat (ground floor)
Flat 2 - 1 bedroom Flat (1st floor) I have an interest in this property
Flat 3 - 1 bedroom (sic) maisonette (ground and 1st floor) Mr Watts owns the leasehold for this property and has no issue with how he has been involved in the process and is keen to proceed.”
4. The Applicant explains the urgency of the application as,

“Due to health and safety concerns (to prevent further falling slates over a shared drive between a church where a playgroup is held. and to remove a potentially unsafe chimney)
Current water ingress causing damage to the internal structure.
As a result of these points work is due to start on Tuesday 2nd January 2024 - delayed due to wet weather.
Slates have fallen in the past (before I owned the freehold) damaging a residents parked car.”
5. The required works are described as,

“Complete roof replacement including new felt (no felt currently) battens and new tiles, barge boards, soffits, fascias and guttering. To replace missing rafters & remove chimney below ridge line -
Agreement entered November 9th to secure availability & work due to commence Tuesday January 2nd 2024 (delayed due to wet weather).”
6. And further, the reason dispensation is sought,

“Unintentional procedural error - as incorrectly assumed that the communication I had provided was sufficient to prove the work was essential and not inappropriate.

Due to health and safety concerns (to prevent further falling slates over a shared drive between a church where a playgroup is held and to remove a potentially unsafe chimney (sic))

Current water ingress causing damage (sic) to the internal structure.

As a result (sic) of these points work is due to start on Tuesday 2nd January 2024 – delayed due to wet weather.

Slates have fallen in the past (before I owned the freehold) damaging a residents parked car.

I have a 1/3 interest of any work undertaken (Flat 2) so would not consider any outlay unless essential.

I only took over the freehold in August 2022 to avoid us having a freeholder who may not have our best interests at heart. I had believed I had the support of the other 2 leaseholder to address issues with the building.

The leaseholder of Flat 3 is very keen to move forward with this work to resolve damp issues they have and is also concerned about the poor state of repair for the building. I have spoken to Mr Watts the leaseholder for Flat 3 to ask him if he wishes to be named in this application – he feels I have acted appropriately and kept him informed.

I did not employ the services of a management agency to keep all our costs down.”

7. A document reporting the schedule of the condition dated 12 December 2023 and various other emails in support of the application have been provided.
8. The Tribunal made Directions on 2 January 2024 which it sent to the Respondent Lessees together with a form for them to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. If the Leaseholders agreed with the application or failed to return the form they would be removed as a Respondent although they would remain bound by the Tribunal’s Decision.
9. Two responses were received from the lessees, one in support and one opposed. No requests for an oral hearing were made. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.
10. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the objection to the application is clearly made and does not require the illumination that an oral hearing might provide.

The Law

11. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:

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.

12. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following.
- a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
 - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
 - h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
 - i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

13. The Applicant's case is set out in paragraphs 3 to 7 above.

14. In his objection the Lessee of Flat 1 refers to;
- The landlord's failure to consult fully and correctly under the Act
 - Failure to consider the financial impact on the leaseholders e.g. staged works could have been possible
 - The estimates include "improvements" beyond repairs e.g. the removal rather repair of a chimney and fascia boards unnecessarily renewed
 - Leaseholders unable to nominate alternative scheme or contractor
 - Criteria for nominated contractor not provided
 - Nominated contractor was not the cheapest and reasons not given
 - Following his inspection on 6 December 2023 it was his opinion that the works were excessive
15. Also submitted is his email suggesting temporary repairs followed by seeking prices from 2/3 independent contractors to carry out more permanent repairs.
16. Photographs are also provided showing what appears to be a generally sound slate roof surface but with evidence of some slipped or missing slates.
17. In her reply the Applicant refers to;
- This was a procedural error. Correspondence on the matter had started in October 2022 and the Respondent was fully aware what was proposed. A lawyer/managing agent will be employed in the future
 - Staged works were considered and 8 quotes obtained. The poor condition of the roof and health and safety issues meant that the works were a priority
 - Numerous repairs had been undertaken in the past and all leaseholders had received invoices in the last 3 years
 - The schedule of condition dated 12 December 2003 refers to stripping and renewing the roof within 5 years
 - The schedule also refers to removing the chimney to avoid future costs which would otherwise need to be taken down and rebuilt
 - Most of the fascia were rotten and needed replacement. At their meeting on 6 December the Respondent commented that the barge boards also needed to be replaced.
 - The cost of the insulation provided will not be recovered through the service charge
 - The Respondent was given the opportunity to nominate a contractor or to carry out the work themselves
 - The required public liability cover for the nominated contractor was provided and other information was available if asked for

- Quotations were originally submitted in November 2022 and no response was received from the Respondent. In selecting a nominated contractor the following has been taken into account; “price, liability insurance, background checks undertaken, ability to undertake the work in a timely manner and samples received of slates to be used.”
- The chosen contractor at a cost of £31,103.89 provided a 10 year guarantee and covered all the areas needing to be addressed whereas the cheapest quote of £28,176.73 excluded the cost of replacing rafters, rotten woodwork etc. Their details were not available via companies house and the only references available were for gardening

Decision

18. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of *Daejan v Benson* referred to above.
19. It is clear that the Respondent Lessee was aware of the Applicant’s intentions to carry out works from late 2022 and, albeit informally invited to make comments and nominate a contractor.
20. The Respondent has given his opinion as a retired MCIOB that the works were excessive however the survey carried out in 2003 had already identified a need for replacing the roof covering.
21. The Applicant has explained the reasons for accepting the quotation that she did and the Tribunal accepts that this was a reasonable option for her to take.
22. The consultation procedure provides that lessees should be consulted about proposed works and their observations considered. It does not however take from the Landlord the ability to determine which course of action to follow. It is sometimes a fine line between carrying out temporary repairs with an acceptance that costs will continue to be incurred and wholesale replacement backed by a guarantee. The decision is however for the landlord as long as they act reasonably which in this case the Tribunal finds that they have.
23. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Repair works to “Complete roof replacement including new felt (no felt currently) battens and new tiles, barge boards, soffits, fascias and guttering. To replace missing rafters & remove chimney below ridge line”**

24. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
25. The Tribunal will send copies of this determination to the lessees.

D Banfield FRICS
1 February 2024

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 to the First-tier Tribunal at 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.