



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

Case Reference : CHI/21UG/LDC/2024/0008

Property : Jasmine Way, Bexhill On Sea, East Sussex,
TN39 3GJ

Applicant : Jasmine Way RTM Company Limited

Representative : Oakfield Property

Respondents : 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 : Regional Surveyor Coupe FRICS

**Date and Venue of
Hearing** : Determination on papers

Date of Decision : 11 March 2024

DECISION

The Application

1. The Applicant seeks retrospective 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 was received on 10 January 2024.
2. The property is described as a small gated-estate comprising six blocks, five of which form part of the RTM Company and contain 29 flats. Properties within the sixth block are occupied under alternative leases and are managed by a separate company.
3. The works for which retrospective permission is sought are described as:

“THE BUILDING IS UNDERGOING WORK 4 [sic] OF THE BALCONIES ON SITE WHICH INVOLVED REMOVING THE 4 COLUMNS IN PARTS, RENEWING THE STEEL FRAME AND RESETTING IN CONCRETE AND FIXING NEW DECORATIVE STONE.

THE PILLARS WERE ORIGINALLY SURVEYED WITH 6 TEST HOLES IN EACH PILLAR AT VARYING AREAS TO TEST IF THE PILLARS WERE HOLLOW OR REINFORCED WITH CONCRETE. IT WAS DETERMINED THAT THE PILLARS WERE LARGELY HOLLOW WITH SOME AREAS HAVING CONCRETE REINFORCEMENT. THE BASE PILLARS AND TOP STONE WERE TESTED TO BE HOLLOW AND WITH THIS IN MIND IT WAS BELIEVED THAT THEY COULD BE CAREFULLY REMOVED AND THEN REUSED ONCE THE STEELS HAD BEEN REPLACED.

UPON COMMENCING THE WORK, AND REMOVING ALL STONE BLOCKS ABOVE THE BASE STONE THE BASE OF THE STRUCTRE WAS REVEALED TO BE COMPLETELY SET IN CONCRETE AND CANNOT BE REMOVED WITHOUT BEING DESTROYED. WITH THIS IN MIND, WE HAVE BEEN INFORMED BY THE STRUCTURAL ENGINEER AND CONTRACTOR THAT WE NEED TO DESTROY THESE STONES, RECAST THE STONE, AND FIT NEW STONE IN LINE WITH THE REST OF THE BLOCK WORK, WHICH HAS RESULTED IN AN ADDITIONAL COSTS WHICH ARE OVER THE LEGAL THRESHOLD. AS THE CONTRACT HAS ALREADY COMMENCED WE ARE SEEKING DISPENSATION TO ALLOW THE CURRENT CONTRACTOR TO CONTINUE WITHOUT ANY ISSUES AND COLLECT THE ADDITIONAL FUNDS.

WE HAVE COMPLETED CONSULTATION FOR THE ORIGINAL SPECIFICAITON [sic] OF WORK WHICH IS MENTIONED ABOVE, WE SEEK DISPENSATION FOR ADDITIONAL WORKS.”

4. On 30 January 2024 the Tribunal directed that the application would be determined on the papers without a hearing unless a party objected in writing within 7 days. No objections were received.
5. The Tribunal directions stated that neither the question of reasonableness of the works, nor the costs incurred were included in

the application, the sole purpose of which is to seek retrospective dispensation.

6. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 16 February 2024 indicating whether they agreed or disagreed with the application.
7. The Tribunal has not received any response to the application from the Respondent leaseholders and nor has the Applicant notified the Tribunal of any objections.

Determination

8. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
9. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
10. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
11. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.

12. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
13. The Tribunal now turns to the facts.
14. The Tribunal is satisfied that the additional works were only identified once the structure of the pillars were exposed. The Applicant sought advice from the appointed Structural Engineer and proceeded in accordance with their recommendations. The Tribunal considers it financially prudent to have done so.
15. The Tribunal takes into account that the Applicant undertook consultation for the original specification of works. The Tribunal also has regard to the fact that there have been no objections from any of the Respondents to the application and, furthermore, that no prejudice as a result of the additional failure to consult has either been demonstrated or asserted.
16. On the evidence before it the Tribunal is therefore satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

17. **The Tribunal grants an order retrospectively dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of the additional work to the stone pillars as described in the application. Dispensation is granted on the condition that the Applicant provides a copy of this decision to all leaseholders and confirms to the Tribunal within 7 days that it has done so.**

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.