



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

Case reference : **LON/00AK/LDC/2023/0310**

Applicant : **Clockhouse Investment Ltd (Roger Short)**

Representatives : **None**

Respondents : **The 7 Leaseholders of The Clockhouse**

Property : **1-5 and 10-11, The Clockhouse, Forty Hill, Enfield EN2 9EX**

Type of Application : **Application for the dispensation of consultation requirements pursuant to S.20ZA of the Landlord and Tenant Act 1985**

Tribunal Members : **Duncan Jagger MRICS**

Venue : **Paper determination**

Date of Decision : **5th March 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).
- (2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property an early Victorian three storey stucco fronted building with a pitched slate roof and flat roof converted to form seven self-contained flats.
2. The Tribunal did not inspect the property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the tribunal to proceed with this determination.
3. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are prepared by the Applicant, plus the Tribunal's Directions, the contents of which we have recorded. Therefore, the Tribunal had before it a bundle of documents extending to 26 pages prepared by the Applicant. Paragraph 4 directions requested that a specimen copy of a lease should be included within the bundle but for whatever reason this was not provided.
4. The Applicant, landlord seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4). The request for dispensation concerns urgent works for the repair works to the to the flat roof at 1-5,10,11 The Clockhouse, Forty Hill, Enfield EN2 9EX ("the Property"), following ingress of rainwater to flat 5. The works involve a replacement "Triflex" liquid rubber covering to the flat roof and associated works. This repair follows previous roof repairs undertaken in August by the same contractor.
5. Notice of the landlord's intention to carry out these works was given to leaseholders by email dated 18th November 2023. The works were considered urgent because the leaking roof was causing damage to flat 5 and because of the landlord's obligation to maintain the fabric of the building. Therefore, the works have already been completed in mid December 2023. The estimated cost of the works is £5,532 inclusive VAT payable to Thomas Roofing of Enfield, an amount that it is proposed to pass to the seven leaseholders through the service charge.

6. Section 20ZA relates to consultation requirements and provides as follows:

“(1) 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.

*(2) In section 20 and this section—
“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

*....
(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

7. The Directions on 17th January 2024 required any of the leaseholders who opposed the application to make their objections known on the reply form produced with the Directions. The Application states that there was one objection from the seven leaseholders. The objector’s grievance was stated to be in connection with the previous roof repair works in August and no written objection was received.

8. By the same Directions of the Tribunal dated 12th January 2024 it was decided that the application be determined without a hearing or by way of a paper case.

The issues

9. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.

This application does not concern the issue of whether or not service charges will be reasonable or payable.

Findings

10. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows.
11. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
12. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
13. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
14. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: ^[11]_[SEP]“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
 - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

- f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii. in what way their rights under (b) above have been prejudiced as a consequence.
- 16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
- 17. The whole purpose of Section 20ZA is to permit a Landlord to dispense with the consultation requirements of Section 20 of the Act if the Tribunal is satisfied that is necessary for them to be dispensed with.
- 18. The Tribunal is of the view that, taking into account that there were no written objections from the leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the defective flat roof covering, as set out in the documentation in the bundle submitted in support of the application.
- 19. The Tribunal was mindful of the fact that the works were undertaken following an inspection from a specialist roofing contractor.
- 20. The Applicant believes that the works were necessary and urgent due to the water ingress. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. The Applicant is required to ensure that the fabric of the building is maintained to the satisfaction of the leaseholders in accordance with the terms of the lease. The remedial works to the flat roof are therefore to be carried out as a matter of urgency, hence the decision of the Tribunal.
- 21. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
- 22. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders named on the schedule attached to the application. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

Name:	Judge Duncan Jagger MRICS	Date:	5 th March 2024
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ANNEX - RIGHTS OF APPEAL

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).