



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

Case reference : **MAN/00BS/LDC/2023/0063**

Property : **Hazel House 48 Swann Lane Cheadle
Cheshire SK8 7HR**

Applicant : **Royal View Court Management
Company Ltd**

Representative : **Residential Management Group Ltd**

Respondents : **Caroline Roberts
Caroline Jones and Richard Jones
Millie Cossins
Christopher Sydall and Henry Sydall
Paul Chapman and Helen Chapman
Sarah Thornton
Adam Spence and Esther Wieringa
Trevor Feehily**

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**

**Date and place of
hearing** : **Paper determination**

Date of decision : **25 January 2024**

DECISION

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 Applicant says that the required works have already been carried out, so this is a retrospective application for dispensation. The works required were to investigate and repair a roof leak into Flat 4 at Hazel House that was noted in December 2022. Scaffolding to the roof was required. The contractor removed seven rows of slates on both sides of a double gable roof, installed new felt, and renewed and reinstated the gutter in the middle with new lead returns up the tiled wall. (“the Works”).
3. 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 are the Respondents in this case.
4. Unless there is full compliance with the consultation requirements, or a dispensation application is granted, the Applicant is prevented by law from recovering more than £250.00 from each Respondent. Therefore, it has made the Application, which was dated 2 October 2023.
5. Directions were issued on 16 November 2023 requiring the Applicant to serve all the Respondents with full details of the Works and explaining why it had decided to seek dispensation rather than carry out a full consultation. The Directions indicated that the application was suitable for determination without a hearing.
6. 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. No responses were received by the Tribunal.
7. The Application has been referred to the Tribunal for determination. This is the decision on the Application.

Law

8. 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). There is a right to challenge service charge costs under section 27A of the Act.

9. 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.
10. To comply with consultation requirements a person collecting a service charge must follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").
11. To obtain dispensation, an application must 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).
12. The Tribunal's role in an application under section 20ZA is therefore not to decide whether it would have been reasonable to carry out the works, but to decide whether it would be reasonable to dispense with the consultation requirements.
13. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative law 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.
14. The Tribunal may impose conditions on the grant of dispensation.
15. 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 Leases

16. The Tribunal has been provided with a sample lease of one of the flats at the Property. It is satisfied that the terms of the lease require the Applicant to maintain and repair the roof of the Property and that the Respondents must pay a service charge (equally) for the cost of the Works, unless of course a Tribunal rules otherwise.

The Application

17. The works required have been outlined in paragraph 2 above. The Applicant has explained in its statement of case that this repair was urgent as water ingress was taking place around electrical installations.
18. The Applicant dealt with the water ingress problem in two stages; firstly, by commissioning an investigation in December 2022, a copy of which has been provided to the Tribunal, and which cost £1,519.66 excl VAT. Secondly, repair works were then commissioned, which took place in February 2023, costing £4,228.59 plus VAT. Total cost, including VAT was therefore £6,897.90 including VAT.
19. The Applicant did not go out to tender for the Works. The explanation is that the leak occurred over the Christmas period, it required urgent resolution, it was difficult to obtain a second contractor at that time, and the chosen contractors are known to the Applicant's managing agent and were considered to be reliable, and in fact they have carried out the Works to a good standard.
20. No Respondent has objected to the Application or provided any representations or comments.

Discussion and decision

21. The Tribunal accepts the rationale for making the Application rather than carrying out full consultation under the Regulations. Full consultation is not practical where emergency works have already been undertaken.
22. No Respondent has claimed to have suffered any prejudice because of the failure to consult.
23. We **determine** therefore 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.
24. The Applicant's agent has stated in its statement of case that prejudice arises if the Works were unnecessary or inappropriate, were carried out to an inappropriate standard or have resulted in an unreasonable amount of cost.
25. The Tribunal respectfully disagrees. The prejudice being considered in this section 20ZA application is any prejudice arising from the failure to

consult, so that could include matters such as loss of opportunity to challenge the rationale for carrying out the Works, or the methodology that is to be adopted for them, or the loss of opportunity to nominate a contractor, or to challenge the price quoted. Under a section 20ZA application, the Tribunal expressly does not consider whether the cost of the Works was reasonably incurred, or whether they were carried out to a reasonable standard.

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

Appeal

27. 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)