FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00FD/LDC/2023/0070**
Property	**:**	**144-158 Warwick Road, Scunthorpe DN16 1EU**
Applicant	**:**	**Southern Land Securities Limited**
Applicant's Representatives	**:**	**Together Property Management**
Respondents	**:**	**The Long leaseholders of parts of 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 March 2024**

DECISION

The Decision

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

Preliminary

1. By an Application dated 10 November 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 undertaken to the roof at the property ("the roof repairs ").

2. The Tribunal issued Directions on 4 January 2024 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.

3. The Applicant, understood to be the landlord and freeholder of the property, acting through its managing agent Together Property Management ("Together PM") provided various documents (both to the Tribunal and the 2 Respondents) including a statement of case, copies of 2 registered leases ("the 2 Leases"), letters/emails dated 2 May 2023 sent to each Respondent ("leaseholder"), further emails dated 22 May 2023, as well as a quotation from Freedom Roofline Design dated 14 April 2023 for full replacement of the soffits and fascia to the whole block for £4950 including VAT, and its subsequent invoice dated 6 June 2023 for the same sum.

4. The Directions confirmed that if the leaseholders wished to oppose the Application they should, within the stated timescale, send to the Applicant and to the Tribunal any statement they might wish to make in response. They have not done so, and nor has an oral hearing been requested.

5. The Tribunal convened on 13 March 2024 to determine the Application.

The facts and background to the Application

6. 144-158 Warwick Road ("the Block") has not been inspected by the Tribunal but is described in the Application as comprising 8 apartments within a purpose-built block. The Tribunal has also been able to gain useful insights from Google's Street view. It is brick built and has a conventional sloping hipped roof.

7. The 2 Leases have been granted out of the freehold. Each of the 2 leaseholders owns a single apartment within the Block under a long-term lease and is due to pay for, amongst other things, through the service charges, one eighth of the costs of the Landlord/freeholder fulfilling its obligation "to keep in good and substantial repair…the roof…".

8. Together PM explained in the Application that flat 148 was experiencing substantial water ingress and to cure the leaks "replacement soffits, fascia and rainwater goods" were required…."We went ahead with the lower of two quotations provided to us by flat 148". It also said in the statement of case that "under the terms of the Lease the freeholder is required to pay for 75% of this cost and flats 144 and 152 are responsible for paying for 50% of the remaining cost" "Due to the damage the water ingress… we could not walt to go through Section 20 process. We wrote to all Leaseholders to advise them of our intention to go ahead with the work as well as being made aware of the cost and that under the terms of the Lease they would be responsible a share of these…

9. Reference was also made to emails received from the owner of flat 152. The papers have included a copy of those written on 22 May in which it was said "The tenant has informed us that there are no issues as described in your original email of 2nd May. The fact that birds nesting in areas of the building may be a contributing factor but not in the vicinity of our property. I understand that no work can take place where birds are nesting between March and September (ie the breeding season). Your email also said the work was urgent, to take from 2nd May to 5th June does not seem urgent to me…".

10. The Tribunal itself has not received any objection to the Application.

The Law

11. 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.

12. 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 leaseholders 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.

13. 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."

14. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* 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 leaseholders 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 to ensure the leaseholders 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 leaseholders 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 leaseholders;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that leaseholders had suffered prejudice;
- Once the leaseholders have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the leaseholders' case;

- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the leaseholders' reasonable costs incurred in connection with the dispensation application;
- Insofar as leaseholders 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 leaseholders fully for that prejudice.

The Tribunal's Reasons and Conclusions

15. 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).

16. 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.

17. 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 leaseholders retain the ability to challenge the costs of the roof 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 leaseholders, 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)…."

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

19. 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 leaseholders beyond the obvious facts of not having been consulted, or of having to contribute towards the costs of works.

20. The Tribunal finds no evidence of any actual or relevant prejudice to the leaseholders.

21. The Tribunal accepts that where leaks occur there is inevitably a degree of urgency. Clearly there are immediate issues for any flat directly affected as well as for its owners, occupiers and any visitors in terms of health, safety and comfort. There is also the clear possibility of consequential and escalating damage if such problems are not properly addressed in a timely fashion.

22. The Tribunal is not surprised therefore by the lack of any objection having been lodged with it in relation to the Application. The potential adverse cost consequences of delaying the completion of the roof repairs to allow for the consultation requirements to be fully worked through, once a need becomes apparent, is likely to have been clear to all.

23. In the absence of any written objections and having regard to the steps that have been taken, the Tribunal has concluded that the leaseholders will not be prejudiced by dispensation being granted.

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

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

26. Nevertheless, and as has been confirmed, this Decision relates solely to the Application. Nothing within it, should be taken as an indication that the Tribunal considers that any service charge costs resulting from the roof works are reasonable or indeed payable or, removes the parties' right to make a further application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 in respect of such matters, should they feel it appropriate.