



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

Case Reference : CHI/43UK/LDC/2024/0010/BS

Property : 55-56 High Street, Caterham

Applicant : Open Homes Limited

Representative : Caterham Developments Limited
martin@lnwl.co.uk

Respondent : 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 : Judge N Jutton

Date of Determination : 1 May 2024

DECISION

Summary of the Decision

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works undertaken at the Property to recover the rear flat roof and fire protection works associated with that roof.**

The application and the history of the case

2. The Applicants applied for 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 sought dispensation from consultation in respect of works which had been undertaken to recover a flat roof at the rear of the property (which serves as the primary access to the residential flats) and associated fire protection works..
3. The Tribunal gave Directions on 18 March 2024, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and not the question of whether any service charge costs are reasonable or payable.
4. The Directions provided that any party who objected should complete a pro forma which was attached to the same. The Tribunal was told by the Applicant that no objections were received.

The Law

5. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
6. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
7. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
8. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with

the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.

9. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

10. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”

11. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

12. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

13. If dispensation is granted, that may be on terms.

14. The effect of *Daejan* has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

Decision

15. The application explains that the subject Property comprises retail units on the ground floor with, it is understood, seven residential flats on the upper floors. That the primary access to the residential flats is across a flat roof. That water had been leaking from the flat roof into the retail units below. That unit 63 on the ground floor was particularly badly affected such that works to repair the flat roof to prevent the ingress of water were required urgently. That whilst the repair works were carried out it was noted that there was a lack of fire protection provision between the ground floor shop units and the flat above. That in order to avoid asking lessees to vacate the building and to save

expense and inconvenience to the lessees it was decided to undertake the fire protection works to the roof at the same time.

16. No leaseholder has objected to the application for dispensation from the statutory consultation requirements.
17. In my judgment it is just and equitable to grant dispensation to the Applicant for the works undertaken to the flat roof at the rear of the property. Further that it was appropriate for fire protection works to the flat roof to be undertaken at the same time for the sake of the safety of the parties and to save additional inconvenience and expense that would have been occasioned by undertaking the consultation process.
18. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however direct that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.
19. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.

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 to the First-tier Tribunal at rpsouthern@justice.gov.uk being 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

