



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

Case Reference : CHI/29UL/LDC/2024/0059

Property : 84 Bouverie Road West, Folkestone, Kent,
CT20 2PP

Applicant : Simwon Property Company Limited

Representative : Smith Woolley

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 : Mrs J Coupe FRICS - Regional Surveyor

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

Date of Decision : 15 April 2024

DECISION

The Application

1. The Applicant seeks 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 15 March 2024.
2. The property is described as a converted residential property comprising four self-contained flats over three floors dating from circa 1880.
3. The subject matter for which dispensation is sought are described as remedial works to prevent further water ingress to the bay roof above Flat 3 and to the Dutch gable, and the replacement of rotten timber soffit boards, plus, associated works. A Notice of Intention pursuant to S.20 of the Landlord and Tenant Act 1985 was served on all leaseholders on 30 August 2022.
4. By June 2023 two tenders had been received, following which the second statutory Notice, the Notice of Estimates, was issued on the 20 June 2023. Service charge demands reflecting the lower of the two quotes were subsequently served by the Applicant on each lessee.
5. Following consultation with the lessees in July 2023 the scope of works was reduced. A revised Statement of Estimates was issued to lessees on 17 October 2023. Service charge demands based on the reduced figures were served.
6. Works commenced in February 2024 however, the appointed contractor uncovered additional damage which had not formed part of the specification tendered and repairs for which the contractor was unable to undertake. Works were suspended pending the Applicant's surveyor revising the Scope of Works and re-tendering.
7. The value of the works subsequently increased from £22,162 to £45,296. Included in such sum was a provision of £1,500 to remedy dampness, latterly identified, within Flat 2.
8. The Applicant seeks dispensation from further consultation in this matter in order to prevent additional delay or escalation in costs, and any further deterioration to the fabric of the building.
9. On 27 March 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.
10. The Directions stated that neither the question of reasonableness of the works, nor of the costs incurred, were included in the application, the sole purpose of which is to seek dispensation.

11. The Directions further clarified that any questions included within the application which went beyond the scope of an application for dispensation would not form part of this determination.
12. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 5 April 2024 indicating whether they agreed or disagreed with the application.
13. The Tribunal received responses from Mark Hughes (Flat 2), Alison Barnes (Flat 3) and Heather Beames (Flat 4) each lessee indicating agreement with the application and that the matter be determined on the papers. No objections have been received by the Tribunal and nor has the Applicant notified the Tribunal of any objections.

Determination

14. In the first instance the Tribunal reviewed the application and considered whether it remained suitable for determination on the papers.
15. The Tribunal finds that there is no substantive dispute on the facts and no objections to the application have been received from the lessees. The application solely concerns whether or not it is reasonable to dispense with the statutory consultation requirements. Accordingly, the Tribunal finds that the matter remains capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
16. 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.
17. 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.
18. 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.

19. 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”.

20. 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.

21. The Tribunal now turns to the facts.

22. The Tribunal is satisfied that the works, as described in the application and for which dispensation is sought, are necessary. The Tribunal finds that the Applicant acted reasonably in its approach and has sought professional advice throughout. Furthermore, the Applicant has demonstrated a willingness to engage in consultation and to vary the works following representations from the lessees.

23. The Tribunal takes into account the fact that lessees representing three of the four flats support the application and no objection has been received from the fourth lessee. Furthermore, that no prejudice as a result of the failure to consult has either been demonstrated or asserted.

24. 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

25. **The Tribunal grants an order dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of remedial works to the bay roof**

and Dutch gable, to the soffit boards, and in relation to the eradication of dampness within Flat 2.

26. **Dispensation is granted on the condition that the Applicant provides a copy of this decision to all leaseholders.**

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.