



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

Case reference : **CHI/00HB/LDC/2024/0033**

Property : **The Grange, Saville Road, Bristol BS9
1JA**

Applicant : **Anchor Hanover Group**

Respondents : **The leaseholders of the Property**

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

Tribunal Members : **Judge Hugh Lumby**

Venue : **Paper determination**

Date of Decision : **21 May 2024**

DECISION

Decision of the Tribunal

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).

The background to the application

1. The Property is a large building comprising 20 leasehold retirement flats, ranging from one bedroom to three. The freehold is vested in the Applicant and the Respondents comprise the leaseholders.
2. The application relates to emergency roof repairs at the Property.
3. The Applicant has explained that the Property has experienced ongoing difficulties with leaks to the roof. The leaks were initially focused in one area but the frequency was increasing in spite of remedial steps taken by the Applicant. A leak in one of the flats in August 2023 required emergency action, with further works identified.
4. The estimated cost of these further works required a consultation with the leaseholders pursuant to section 20 of the Landlord and Tenant Act 1985. This consultation began on 12th September 2023 by the service of notices of intention on the leaseholders. A number of nominations of contractors were received in response and these were approached for quotations.
5. However, before the consultation could be completed, the leaks worsened, resulting in water ingress into five flats. This included leaks into one flat where the occupant was suffering from severe health conditions, as identified in the bundle provided to the Tribunal. The Applicant considered that this damp could seriously compromise that occupant's health.
6. The Applicant took the view that the nature of the leaks and the potential adverse impact on residents meant that the remedial works to stop the leaks should begin immediately. It therefore awarded the contract and ceased the consultation. The contractor appointed was the one with the lowest quotation.
7. The Applicant has described the works as follows:

“The Roofing works to be completed included the valley on the main roof to be striped completely, recovered, and apply new weatherproof system into pitched roof area. To redirect existing drainage run off to hopper and carry out all associated works to ensure the area is defect free and watertight. We also proposed to remove and relay surrounding tiles, checking the condition of the felt no more than 1meter in distance from valley and to carry out any minor felt repairs. As always with these types of repairs we anticipated that there might be additional unforeseen works required that only become evidence once

works commence. The works also include scaffold access and edge protection for safe delivery of works at height.”

8. The contract was awarded on 21 November 2023 and is understood to have started shortly afterwards. Some additional required works were identified and carried out. The works were completed in January 2024 with a final cost of £37,683.12 inclusive of VAT.
9. The Applicant wrote to the leaseholders at the end of November 2023 explaining the decision to start the works immediately and apply for dispensation. It states that letters were sent to the Respondents explaining the scope of works. In addition, four face to face meetings were held to update residents on progress and the additional costs.
10. Dispensation is sought on the basis that the roof works were required as a matter of emergency. The Applicant contends that it is not possible to repair the roof from inside or to complete any further temporary repairs. In addition, the personal circumstances of some of the residents impacted by the leaks meant that further delay whilst the consultation was completed was not appropriate.
11. The Applicant has confirmed that the Respondents have been informed of this application. One objection has been received, from Ms Tina Kaulbach on behalf of the estate of the late Mr W A L Kaulbach. Ms Kaulbach objects on the basis that she and other leaseholders have been prejudiced by the loss of the ability to inspect quotes and/or proposing alternative contractor. If her objection is unsuccessful, she would like the Tribunal to consider adding conditions to any dispensation. She argues that there have been a number of roof works to the Property (involving erecting and striking scaffolding at great cost) and the landlord as a housing association has much experience when it comes to assessing repairs, so suggesting that they should have considered other temporary solutions such as diverting water ingress or the use of dehumidifiers or even decanting the affected resident. Ms Kaulbach did not object to the application continuing as a paper determination without a hearing.
12. The Applicant responded to Ms Kaulbach’s objection, arguing that residents were given an opportunity to comment on the proposed work and to nominate alternative contractors as part of the 12 September 2023 consultation. The emergency nature of the works meant further consultation was not possible. It did consider other options but none of these were in its opinion viable. This included considering whether to move the resident most at risk; this was not appropriate due to their health.
13. By Directions of the Tribunal dated 4 April 2024 it was decided that the application be determined without a hearing, by way of a paper case.

14. 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.
15. This has been a paper determination which has been consented to by the parties. The documents that were referred to are contained in a 89 page bundle containing a statement of case the Applicant's application, a specimen lease, a list of the leaseholders, correspondence with the Respondents, details of additional works and the final invoice plus the Tribunal's Directions dated 4 April 2024, the contents of which has been recorded.

The issues

16. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

Law

17. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") 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.
18. 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.
19. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
20. 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.

Findings

7. 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.
8. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: ^[L11L11]_[SEP1SEP1]“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.

Consideration

17. 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.
18. The Tribunal has considered the objection received from Ms Kaulbach. She argues that she and other leaseholders have been prejudiced by not being able to nominate contractors or inspect quotations. The Tribunal notes that a consultation was launched in September 2023 and a number of nominations for contractors were received and asked to provide quotations. The Respondents therefore did have an opportunity to nominate contractors. In addition, the lowest quote was accepted and cost information provided to the leaseholders. In any event, the right to challenge the reasonableness and payability of sums charged remains open to her, as explained above. As a result, the Tribunal could not find any prejudice to the leaseholders of the Property by the granting of dispensation relating to the urgent works to the Property. In reaching that conclusion, it took into account that no objections had been received from other leaseholders.
19. The Tribunal also looked at Ms Kaulbach's request for conditions to the dispensation. This request is essentially intended to reduce future expenditure on roof repairs by considering alternatives. The Applicant has explained why those alternatives were not appropriate in this situation. The Tribunal accepts this explanation and is cognisant that it is for the landlord to decide how to deal with repairs. Any challenge to that would be by way of application pursuant to section 27A of the Landlord and Tenant Act 1985. It is not appropriate for the Tribunal to attach

conditions to an existing dispensation in relation to future works. In addition, as the works have been completed, it does not consider any conditions are appropriate in relation to these works.

20. The Applicant believed that the works were urgent to ensure that there was no further water ingress and damage to the Property and to protect the health and safety of residents. 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.
21. 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.

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
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.