



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

Case reference : CHI/21UD/LDC/2024/0079

Property : The Sea House, 37A George Street, Hastings,
East Sussex TN34 3EA

Applicant : Mr Peter Stavri & Mrs Lorraine Stavri

Representative : Oakfield Property Management

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 : 5 June 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 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 26 April 2024.
2. The Tribunal notes that the Applicant has included the names of the leaseholders of the commercial premises as well as those leaseholders of the residential premises to which this application applies. The Respondents in this case are the leaseholders of the flats in this Property and not anyone else with an interest in the commercial units.
3. The Property is a large building comprising eleven leasehold flats above three commercial units. The freehold is vested in the Applicant and the Respondents comprise the leaseholders of the eleven flats.
4. The application relates to emergency repairs at the Property to prevent water ingress. The work required relates to the renewal of flat roofs that are spongy and becoming waterlogged and the renewal of valleys which are also allowing water ingress. In addition, the Applicant proposes to renew the upstands to the balconies which are stated to be not fit for purpose.
5. The Applicant states that there is an urgency to the work to prevent further water ingress and damage. Two quotations for the roof works have apparently been obtained and one has been provided to the Tribunal, showing a price of £18,450 plus VAT (so £22,140 in total). Quotations for the balcony work are being obtained.
6. The estimated cost of the works required a consultation with the leaseholders pursuant to section 20 of the Landlord and Tenant Act 1985. The Applicant states that it is carrying out a stage 1 consultation in conjunction with this application. It seeks dispensation so that the works can be completed in a more timely manner.
7. The Applicant has confirmed that the Respondents have been informed of this application. No objections have been received and two replies received (from the leaseholders of Flats 3 and 11) confirming their agreement with the application and to it proceeding by way of paper determination.

8. By Directions of the Tribunal dated 1 May 2024 it was decided that the application be determined without a hearing, by way of a paper case.
9. 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.
10. This has been a paper determination which has been consented to by the parties. The documents that were referred to are the Applicant's application, a specimen lease, a list of the leaseholders, correspondence with the Respondents and a quotation for the works plus the Tribunal's Directions dated 1 May and 22 May 2024, the contents of which has been recorded.

Strike out consideration

11. The 1 May 2024 Directions also directed that if no objections to the application are received, the Applicant must confirm this to the Tribunal by 15 May 2024. No such confirmation was received, despite a chase from the Tribunal on 16 May 2024. Accordingly, by Directions dated 22 May 2024, the Tribunal informed the parties that it was minded to strike out the application and giving the parties until 5 June 2024 to make representations. The Applicant responded on 23 May 2024, explaining that it had not received the relevant email and providing the necessary confirmation. No representations have been received from the Respondents.
12. Given that the relevant confirmation has now been provided and an explanation for the non-compliance has been provided, the Tribunal considers that it is now able to deal with the application justly and fairly and therefore determines not to strike the application out.

The issues

13. 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

14. 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.

15. 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.
16. 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.
17. 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: ^[11]_{SEP}“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 is of the view that, taking into account that there have been no objections from the leaseholders, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the urgent works to the Property.
19. The Applicant believed that the roof works were urgent to ensure that there was no further water ingress and damage to the Property. Less information has been provided in relation to the balcony works and why these need to be done urgently. However, it also notes that no objections have received in relation to those works, including the balcony elements. As the balcony upstands have been stated to be not fit for purpose, there are good reasons to proceed with those works as well. No prejudice to leaseholders by dispensing with the requirements for a consultation have been identified. On the evidence before it, the Tribunal agrees with the Applicant's conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
20. 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.