



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

Case reference : **CHI/29UQ/LDC/2024/0068**

Property : **Drummond Hall, Swaylands Estate,
Penshurst Road, Tonbridge, Kent, TN11
8DF**

Applicant : **Swaylands Estate Management Limited**

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 new build block constructed around 2010, containing ten apartments in the grounds of the historic Swaylands Estate.
2. The Applicant is the freeholder of the wider estate and is owned by the leaseholders of the various developments on it, including the Property. The Respondents are the leaseholders of the Property.
3. The company developing the Property went into administration midway through the development. A new contractor was retained by the administrators to complete the work but many defects remained with the Property after completion, including condensation and water ingress through both the external walls and various flat roofs. There were several unsuccessful attempts to rectify this.
4. The Applicant received £3,952,716 from the administrators and £161,926 from the NHBC to rectify the defects. Westridge Construction Limited was retained in 2021 to carry out the works with a contract price of £2,989,801. With fees added, the costs of the works were less than the sums held. However, Westridge Construction Limited went into administration in September 2023 before the works were completed. A new contractor was retained but the total cost of the works including fees had now increased to £3,967,538. Overall, the Applicant faces a shortfall of about £105,000 which it will ultimately look to recover through the service charge for the Property.
5. The remaining works are set out in a financial statement dated 29 August 2023 provided by Playle & Partners (the Applicant's quantity surveyors).
6. There has been no consultation with the Respondents in relation to the works. The Applicant believed it did not have to consult if the full cost of the works would be met from the funds received from the administrators and NHBC. However, it accepts it is now caught by the consultation requirements of section 20ZA of the Landlord and Tenant Act 1985 and applies for dispensation from those requirements.
7. The Applicant argues that dispensation should be given on the grounds that no relevant financial prejudice has been incurred by the Respondents, that the failure to consult was inadvertent and any

questions as to the reasonableness and payability of any contributions requested from the Respondents can be addressed through a claim pursuant to section 19 of the Landlord and Tenant Act 1985.

8. The works were said on 9 April 2024 to be nearly complete.
9. The Respondents were informed of this application for dispensation. All leaseholders responded, with nine agreeing and one objecting. The objection was received on behalf of Mrs Deborah Fryett. Her objection is that the behaviour of the Applicant added to the problems incurred, causing her financial and moral prejudice. She sets out various costs that could have been avoided as well as additional costs incurred, arguing that the scope and extent of the works was unnecessary and would have been reduced if there had been a section 20 consultation.
10. By Directions of the Tribunal dated 15 April 2024 it was decided that the application be determined without a hearing, by way of a paper case.
11. 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.
12. This has been a paper determination which has been consented to by the parties. The documents that were referred to are contained in a statement of case, the Applicant's application, a specimen lease provided with it, a financial statement provided by Playle & Partners plus the Tribunal's Directions dated 15 April 2024, the contents of which has been recorded.

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: “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. Only one objection was received to the application for dispensation, being from Flat 2 by Mr Stephen Fryett on behalf of his wife. It is clear

that Mr Fryett considers that the rectification process has been mishandled by the Applicant and extra costs incurred which would have been avoided by a consultation.

19. The Tribunal has carefully considered the submissions on behalf of Mrs Fryett. Her complaints relate to the reasonableness and payability of the sums demanded from leaseholders rather than any consequence flowing from the failure to consult. These issues can be addressed by an application pursuant to section 19 of the Landlord and Tenant Act 1985. There is no evidence that a consultation following the administration of the previous contractor would have altered the outcome or material changes made at that stage. Accordingly, the Tribunal determines that no relevant prejudice has been identified that would have been avoided had a consultation taken place.
20. The works in question are the works required to complete the project, following the administration of the previous contractor. Mr Fryett refers to ongoing water ingress issues and the Tribunal accepts that the works need to be completed without further delay. The Tribunal is of the view that, taking into account that there have been no other 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 rectification works to the Property.
21. The Applicant believed that the works were urgent to ensure that the works are completed. 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.
22. 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.