FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UQ/LDC/2024/0091
Property	**:**	1 Nevill Terrace, Tunbridge Wells, Kent TN2 5QY
Applicant	**:**	Long Term Reversions (Torquay) Ltd
Representative	**:**	Parkfords Management Ltd
Respondent	**:**	Ms D I Stamp (Flat 1) Mr P Coleman (Flat 2) Mr R Coomber & Mrs M Coomber (Flat 3) Ms M Sewell (Flat 4)
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	**:**	Regional Judge D Whitney
Date of Directions	**:**	28 June 2024

Decision

Background

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 by email on 20 May 2024.

2. The property is described as,

> The building is a residential 4 storey building constructed in circa 1930, traditional brickbuilt with a render finish, the property contains 4 apartments.

3. The Applicant explains that:

> There is visible cracking to the decorative masonry window head which has caused some of the masonry to drop, there is also cracking to the cills [sic] and the structual [sic] integrity of the lintel and cills [sic] is questionable.

4. The works are described as,

> Erection of scaffold, exposure of the lintels and propping to provide support to the area, investigatory work to establish the cause of the lintel failure and any works required to ensure the structural integrity of the building.
>
> Notice of intention was issued on 16.05.24
>
> Dispensation is sought in order to make the area secure and safe and to enable investigations.

5. The Tribunal issued Directions on 3 June 2024 which were sent to the Lessees together with a form for them to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. If the Leaseholders agreed with the application or failed to return the form, they would be removed as a Respondent although they would remain bound by the Tribunal's Decision.

6. The Tribunal received only one response which was sent from the leaseholders of Flat 3 who did not object to the application. No requests for an oral hearing were made. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.

7. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.

8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed**

costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.

The Law

1. 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.

2. 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".

3. 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.

4. 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".

5. 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).

6. 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."

7. 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.

8. 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.

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

10. 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.

Evidence

11. The Applicant's case is set out in paragraphs 2, 3 and 4 above.

Decision

12. No objections have been received from the leaseholders. The leaseholders of Flat 3 submitted a reply form, but were in agreement with the application. No response has been received from the other three leaseholders.

13. I have considered the application form dated 20 May 2024 and accept the facts set out within it. I am satisfied that these facts prima facie are sufficient to justify making an application for dispensation from consultation requirements given the time such consultation will take.

14. In reaching my decision I have taken account of the fact that the leaseholders have had opportunity to raise any objection and they have not done so. They have not asserted that any prejudice has been caused to them.

15. The Tribunal finds that the Respondents have not suffered any prejudice and that nothing different would be done or achieved in the event of a full consultation with them, except for potential delays and problems.

16. **I therefore grant dispensation from consultation requirements of S.20 Landlord and Tenant Act 1985,**

subject to a condition that a copy of this decision shall be served by the Applicant upon all leaseholders at the Property.

17. 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. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

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.