



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

- Case Reference** : LON/00AG/LDC/2024/0105
- Property** : 140 Cavendish Road, Clapham South, London,
SW12 00D
- Applicant** : Southern Land Securities Ltd
- Representative** : Together Property Management
- Respondent** : Chia Lin Lu (Flat 1)
Mr & Mrs Maasakkers (Flat 2)
Caroline Fielder (Flat 3)
Mr David St Pierre Parry & Ms Olivia D Price
(Flat 4)
Paul Denning (Flat 5)
Aisling Francesca Jackson Cousin (Flat 6)
Stephen Buckley (Flat 7)
George Smibert (Flat 8)
Samantha Whitaker (Flat 9)
James Needham (Flat 10)
- Type of Application** : To dispense with the requirement to consult
lessees about major works section 20ZA of the
Landlord and Tenant Act 1985.
- Tribunal Members** : Mr D Jagger MRICS
- Date of Decision** : 18 June 2024

Decision

Decisions of the Tribunal

- (1) 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).
- (2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property is a Victorian four-storey building comprising 10 self-contained flats which was a former hotel.
2. 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.
3. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are prepared by the Applicant, plus the Tribunal's Directions dated 17 April 2024.
4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4). The request for dispensation concerns urgent repair works to the damaged balcony of flat 9 and 6 at 13 Warrington Crescent London W9 1ED ("the Property"). It is asserted that the damage to the balcony of flat 9 is causing ingress of rainwater to flat 6 below and subsequent damp problems internally. The remedial works involved replacing the defective decking to the balconies following the erection of two scaffolding towers.
5. The repair works were considered urgent because of ongoing damp problems to flat 6 and potential damp issues to flat 3. Also, because of the landlord's obligation to maintain the fabric of the building. Therefore, the works have already been completed. The works were undertaken by Hamilton Roofing at a total cost of £6,792 and it is proposed to pass the costs to leaseholders through the service charge.
6. 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.

7. The Directions on 17 April 2024 required any of the leaseholders who opposed the application to make their objections known on the reply form produced with the Directions. No known objections were received.
8. By the same Directions of the Tribunal dated 17 April 2024 it was decided that the application be determined without a hearing by way of a paper case.

The issues

9. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

Findings

10. 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.

11. Section 20 of the Landlord and Tenant Act 1985 (as amended) 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.
12. 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.
13. 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.
14. 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.

17. The whole purpose of Section 20ZA is to permit a landlord to dispense with the consultation requirements in Section 20 of the Act if the Tribunal is satisfied that it is necessary for them to be dispensed with.
18. The Tribunal is of the view that, taking into account that there were 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 repair works to the defective render on the main wall, as set out in the documentation in the bundle submitted in support of the application.
19. The Tribunal was mindful of the fact that the works have already been undertaken by a contractor..
20. The Applicant believes that the works were necessary as it is seen as a urgent matter to prevent ongoing damp to flat 6. 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. The Applicant is required to ensure that the fabric of the building is maintained to the satisfaction of the leaseholders in accordance with the terms of the lease. The remedial works to the two balconies were therefore to be carried out as a matter of urgency, hence the decision of the Tribunal.
21. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
22. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the 10 leaseholders named on the schedule attached to the application. Furthermore, 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.

D I Jagger MRICS. 18th June 2024

ANNEX - 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.