



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

Case reference	:	MAN/00DA/LDC/2024/0072
Properties	:	Flats 1 – 16, 198-200 Chapeltown Road, Leeds LS7 4HZ
Applicant	:	Newton Villas Leeds Management Company Limited
Representative	:	Elizabeth Price, Scanlans Property Management LLP
Respondents	:	The residential long leaseholders listed in the Annex to this Decision
Representatives	:	None
Type of application	:	An application under section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of the consultation requirements in respect of qualifying works
Tribunal member	:	Judge C Goodall
Date and place of hearing	:	25 October 2024 by video hearing
Date of decision	:	25 October 2024

DECISION

Background

1. Newton Villas is a residential block of flats known as 198-200 Chapeltown Road, Leeds. The Tribunal has been informed that there are fifteen flats, all let on 250 year leases from 2019.
2. On 20 September 2024, the Applicant applied for a decision by this Tribunal (“the Application”) that it may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of qualifying works required to unblock and complete repairs to the pipeworks and drainage system at the building known as 198-200 Chapeltown Road, Leeds (“the Works”).
3. Unless there is full compliance with the consultation requirements, or a dispensation application is granted, the Applicant is prevented by law from recovering more than £250.00 from each Respondent in respect of the cost of the Works. Therefore, it has made the Application, which was dated 20 September 2024.
4. The Works are urgent because until the Works are carried out, the occupiers of the building are unable to use their bathrooms. On 17 October 2024, Leeds City Council issued a Notice under the Public Health Act 1961 requiring Aspin-Hall Developments Ltd to remedy the blockage of the drains within 48 hours. On 18 October 2024, the Tribunal therefore agreed to deal with the application under the urgent procedure rule contained in Rule 46 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
5. Directions were issued on 18 October 2024 requiring the Applicant to serve all the Respondents with a copy of the application for dispensation. An urgent hearing was arranged for 25 October 2024. All Respondents were invited to make any written representations they wished and to attend and participate in the hearing.
6. This is the decision on the Application.

Law

7. The Landlord and Tenant Act 1985 (as amended) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
8. Section 20 imposes an additional control. It limits the leaseholder’s contribution towards a service charge to £250 for works, unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service

charge for either works on the building or other premises costing more than £250. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.

9. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)). Very broadly, the procedures require that the service charge payers be provided with details of proposed works so that they may comment on them. They may also suggest contractors. The landlord / management company has to obtain quotations, and the payers have the right to suggest contractors.
10. To obtain dispensation, an application has to be made to this Tribunal. We may grant it if we are satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
11. The Tribunal’s role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works, but to decide whether it would be reasonable to dispense with the consultation requirements.
12. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; if so, it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

The Leases

13. The Tribunal understands that the Leases of the flats at the Property are in common form. The freehold is owned by Aspin-Hall Developments Ltd, who have covenanted to keep the common parts at the Property (including the drains) in good repair. The lessees must contribute a fair and reasonable share of the costs of doing so, which the Tribunal understands is presently an equal share of those costs.
14. The Landlord has sub-contracted its obligations to repair to a lessee-owned management company, which is the Applicant in these proceedings.

The Hearing

15. For the Applicant, Ms E Price attended the urgent hearing. One lessee, a Mr J Chakravorty, did so also.

16. Ms Price told the Tribunal that there have been problems with blocked toilets in some flats for some time. In four, the problem is severe. Sewerage had been reported to be backing up to the toilets. Residents had reported that the drainage was “temperamental” in other flats.
17. A drainage company (CDC Draincare Ltd (“CDC”)) has investigated the problem and provided a report dated 16 May 2024. The report was a CCTV inspection of ten drainage runs. Using the reference points on the plan in the report, the following defects were reported:
 - a. MH2 to MH3 – evidence that the falls might be inadequate and blockage apparent on inspection, which was cleared. Levels survey required – cost £480 plus VAT. Further work possibly required on completion of the levels survey;
 - b. MH1 to US – longitudinal crack in this section – cost of structural patch repair £450.00 plus VAT;
 - c. MH1 to B2 - longitudinal crack, circumferential crack, and large displaced joint – 4 metres of structural patch repair required – cost £1,400.00 plus VAT;
 - d. MH1A to MH3 – multiple cracks and two displaced joints, plus accumulated grease – descale and 6 structural patch repairs required – cost £2,350.00 plus VAT;
 - e. SVP to MH7 – two displaced joints and cracks and spiral cracks identified – six structural patch repairs required at a cost of £2,100.00 plus VAT.
18. The Judge asked Ms Price whether CDC were able to clear the blockages by rodding to deal with the urgency of the problem. The hearing was adjourned for a short time to allow her to enquire of CDC. After the adjournment, she informed the Tribunal that the drains had already been rodded to clear blockages when CDC attended to carry out their survey. Due to the existence of broken sections and the possible lack of a fall, CDC recommended a level survey to ensure there was a positive fall. They advised that there may be further costs once the survey was completed but would be unable to confirm until then.
19. Ms Price confirmed that Leeds City Council had served a Notice under s17 Public Health Act 1961 noting that a drain/private sewer at the Property is stopped up and requiring that the defect be remedied within 48 hours of service of the Notice.
20. Mr Chakravorty supported the Application. No Respondent has objected to the Application.

Discussion and decision

21. The Applicant is not consulting on the proposal to carry out the Works because they are time consuming. That is understandable bearing in mind that there is a need for urgency. That is evident from the involvement of Leeds City Council and the obvious inconvenience and health issues arising if residents are unable to use their bathrooms.
22. I must decide if it is reasonable to permit the Applicant to dispense with the Consultation Requirements. Lack of full consultation would disadvantage the Respondents as they would lose the opportunity to scrutinise the proposed Works, make comments, and suggest contractors.
23. In most cases requesting dispensation, a Tribunal will still wish to ensure that Respondents have been given details of the proposed works and have had some opportunity at least to assess whether they would be prejudiced by the granting of dispensation.
24. I am conscious that the Respondents have not seen the CDC report and have only had a short time to respond to the Application. I am conscious that the Applicant has not obtained any competitive quotations. Bearing in mind that the CDC survey was carried out in May 2024, there would have been time to do this.
25. Nevertheless, I take the view that the Works need to be carried out urgently due to health and safety concerns and because there is a statutory notice requiring them. There is no basis for me not to accept that the Applicant's agent has carried out its work in sourcing and commissioning the CDC report competently. It is reasonable, in my view, for the Tribunal to grant dispensation from consultation in respect of the costs that the Applicant may incur under the CDC quote, i.e. the sum of £6,780.00 plus VAT (total £8,475.00).
26. It is highly likely that further costs will arise, according to the CDC report. This dispensation does not cover any further costs. A further application will need to be made if they arise. If those works are also urgent, the Applicant should draw that to the Tribunal's attention when making such an application.
27. I therefore **determine** that the Application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the carrying out of the works set out and quoted for in the CDC report dated 16 May 2024.
28. This decision does not operate as a determination that any costs charged to any Respondent for utility costs are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and Respondent's remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

Appeal

29. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Annex – The Respondents

Mr N & Mrs P Grizzard

Mr Graham Simms

Mr L J Peters

Ms Veronica Mikurova

Copperlan Limited

Mr P Kemp & Mrs C Kemp

Mr J S Tatla & Mrs R K Tatla

Mr Eion McDonnell & McDonnell Anaesthesia Ltd

Mr W A Rose

Mr David Kelner

Mark Williams

Mr A Dunbar

Mr J Chakravorty

Richard Sutor Limited & Sarah Merrick Limited

Sarah Merrick Limited