



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

Case Reference : HAV/29UQ/LDC/2024/0515

Property : Mount Ephraim Court, Molyneux Park
Road, Tunbridge Wells, Kent, TN4 8DH

Applicant : Mount Ephraim Court Limited

Representative : Alexandre Boyes

Respondent : The Leaseholders of Mount Ephraim Court

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 Decision : 15 November 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 on 30 August 2024.
2. The property is described as:

....A BLOCK OF 16 FLATS IN A CONVERTED BUILDING
3. The Applicant explains that the works are urgent because:

THE WALL TO THE FRONT OF THE PROPERTY IS BOWING OUTWARDS AND THE MOVEMENT HAS BECOME MORE SIGNIFICANT IN THE LAST COUPLE OF WEEKS - THE WALL IS ON A PUBLIC PATHWAY AND THERE ARE SERIOUS CONCERNS IT WILL FALL ONTO THIS PATHWAY - THE AREA HAS BEEN CONED OFF FOR PUBLIC SAFETY

....2 QUOTES HAVE BEEN OBTAINED BUT DUE TO THE RECENT SIGNIFICANT MOVEMENT WE NEED TO PROCEED AS SOON AS POSSIBLE

NO CONSULTATION HAS BEEN CARRIED OUT - DUE TO THE URGENCY OUR CLIENTS HAVE ASKED THAT WE SEEK DISPENSATION
4. Dispensation is sought,

DUE TO THE POTENTIAL DANGER AND URGENCY OF THE WORK NEEDED
5. The Tribunal issued Directions on 5 September 2024 (which were sent to the Applicant on 6 September 2024) requiring the Applicant to send them 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. Following a case management application submitted from the Applicant on 27 September 2024, the Directions were reissued on 7 October 2024 with extended dates for compliance by the parties.
7. No objections were sent to the Tribunal and on 5 November 2024 the Applicant wrote to the Tribunal also confirming that no objections had been received. 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.

8. 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.

The Law

9. 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.
10. 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”.
11. 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.
12. 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”.
13. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if it was 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).
14. 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.”
15. 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.

16. 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.
17. If dispensation is granted, that may be on terms.
18. 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

19. The Applicant's case is set out in paragraphs 2 to 4 above.

Decision

20. No objections have been received from the leaseholders.
21. I have considered the application form dated 28 August 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.
22. 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.
23. 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.
24. **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.**
25. 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.