FIRST TIER PROPERTY CHAMBER DECISION

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| Crest |  | FIRST-TIER TRIBUNAL  **PROPERTY CHAMBER**  **(RESIDENTIAL PROPERTY)** |
| **Case Reference** | **:** | **CHI/43UB/LDC/2024/0067** |
| **Property** | **:** | **Flats 15, 17, 19, 21 and 27, Old Manor House, 15 Station Road, Thames Ditton, Surrey KT7 0NU** |
| **Applicant** | **:** | **Northumberland & Durham** **Property Trust Limited** |
| **Representative** | **:** | **Mr. Palfrey**  **Counsel** |
| **Respondent** | **:** | **Mr. D. Wright**  **Mr. and Mrs. Strang**  **Mr. M. Hunter**  **Mr. C. Robinson**  **Mr. N. Turrell** |
| **Type of Application** | **:** | **Application for the dispensation of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985, pursuant to Section 20ZA as amended.** |
| **Tribunal** | **:** | **Judge T. Hingston**  **C. Davies FRICS**  **T. Wong** |
| **Date of Decision** |  | **21st November 2024** |

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**DECISION**

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**DECISION OF THE TRIBUNAL**

**The tribunal determines that it is not reasonable to dispense with the consultation requirements in this case, and the Application is refused.**

**Accordingly the amount which can be demanded from the Respondents by way of service charge contributions in respect of the felling and disposal of the cedar tree is limited to £250 per flat.**

**BACKGROUND AND CHRONOLOGY**

**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 (hereinafter referred to as ‘The Act’). A bundle of relevant documents has been provided to the Tribunal.

**2.** The property is an old manor house which has been converted into a number of separate residential units. The holder of the head-lease is the Northumberland & Durham Property Trust Ltd., which is a subsidiary of the Grainger PLC organisation.

**3.** Some of the flats remain in the possession of the Applicant company, but 5 were sold on long leases to the Respondent leaseholders as listed above.

**4.** The gardens and grounds of the property contain a number of mature trees, which (until May 2024) included a substantial cedar tree.

**5.** Under the Leases the lessees are obliged to pay to the landlords an amount each year by way of service charges, which represents a proportion of the costs incurred by the landlords in complying with their obligations under the Lease.

**6.** All parties are agreed that the large cedar tree unfortunately became diseased and unsound over the years, and on 21st of June 2023 a heavy branch broke off and fell to the ground. This was reported to the then managers, Town and City, immediately.

**7.** A survey was commissioned from Simon Jones Associates, Arboricultural Planning Consultants, and their report dated 10th August 2023 recommended that the tree should be removed.

**8.** It is accepted by all parties that by then the tree posed a safety hazard, and that responsibility for dealing with the problem rested with the landlords under the terms of the Lease. Another heavy branch fell on the 21st of September 2023.

**9.** There is no dispute that by September 2023 it was obvious that removal of the cedar was the only and inevitable solution, but as it was subject to a Tree Preservation Order planning consent had to be sought. Consent was given by Elmbridge Borough Council on the 26th of September 2023.

**10.** The property managers, Town and City, obtained 4 quotations for the works to fell and dispose of the tree. The quotations were as follows: -

i) 12 September 2023 Benton Arboriculture £6,900 ▪ *Fell to near ground level ▪ Removal of debris*

ii) 15 September 2023 David Ford Tree Care £11,220 ▪ *Fell to near ground level ▪ Grind below ground level and backfill grindings to ground level*

iii) 21 September 2023 Treeline Services Ltd £5,400 ▪ *Fell to near ground level ▪ Removal and recycling of debris*

iv) 13 October 2023 Connick Tree Care £8,214 ▪ *Fell to ground level ▪ Removal of debris.*

**11.** On the 1st of November 2023 HLM (Lambert, Smith Hampton Group Limited) took over management of the property.

**12.** On the 14th of February 2024 HLM obtained another quotation for removal of the tree, from AMP Tree Surgery. This company quoted £7,250 and stated as follows:

*‘We recommend removing the tree, all brash wood and then neatly stacking the cord wood and trunk into a habit stack making a feature of it.’*

**13.** On the 26th of February 2024 HLM sent out to the lessees a ‘Notice of Intention to carry out work’, by way of the first step of the consultation process required under Section 20 of the Act. The Notice explained what works were proposed (i.e. the felling of the tree as recommended in the survey), and invited the Respondents to propose the names of anyone who should be asked to give an estimate for the work. No previous quotations or estimates as to the likely cost were mentioned in this document.

**14.** There was then no further consultation between the landlord and the lessees, and no work was carried out for over two months.

**15.** In the interim, on the 8th of April 2024 Mr. Jonathan Gough, Director of Building Safety and Block Management at Grainger PLC, filed the Application to the Tribunal for Dispensation of the Consultation Requirements.

**16.** The application form stated erroneously (at Page 6 of the bundle) that the works had already been started or carried out, and described it as a ‘retrospective’ application.

**17.** In fact the works did not start until the beginning of May 2024, when the tree was finally felled.

**18.** Directions were issued by the Tribunal, and the matter was set down for hearing on the 19th of November 2024.

**HEARING**

**19.** The Hearing was held at Havant Justice Centre, with the Tribunal sitting in person and the parties attending by video link.

**20.** Mr. Gough attended for the Applicants, represented by Mr. D. Bacon from Seddons Law LLP and by Counsel Mr. Palfrey.

**21.** Mr. David Wright attended as Respondent, together with his tenant (and son) Mr. Robert Wright and Respondent Mr. Michael Hunter.

**LAW AND JURISDICTION.**

**22.** Where Section 20 of the Landlord and Tenant Act 1985 applies (i.e. where the cost of works exceeds £250 per residential unit) the ‘relevant costs’ of tenants for the purpose of liability for service charges in respect of such works are limited to the same amount - £250 per unit - unless the consultation requirements have been *either -*

(a) complied with, or

(b) dispensed with by the appropriate Tribunal.

**23.** The consultation requirements include regulations requiring the landlord to :-

(a) provide details of the proposed works to tenants

(b) obtain a number of estimates

(c) invite tenants to propose persons or contractors from whom estimates should be obtained

(d) have regard to observations made by tenants, and

(e) give reasons for carrying out works or for engaging particular contractors in certain circumstances.

**24.** Under Section 20ZA of the 1985 Act (as above) an Application can be made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works. The Tribunal may make the determination if satisfied that it is reasonable to do so.

**APPLICANT’S CASE.**

**25.** The Applicant’s case was set out in the application form and supporting documentation, in their response (dated 1st November 2024) to the Respondent’s objections, and in oral evidence and Counsel’s submissions at the hearing.

**26.** On behalf of the Applicants it was submitted that the works were of an urgent nature for health and safety reasons, that a partial consultation had been carried out by service of the Section 20 ‘Notice of Intention’ (to which it was said there was no response or objection) and that the Respondent lessees had not suffered any prejudice as a consequence of the failure to follow the full consultation process.

**27.** When the Tribunal asked why the consultation process had not been commenced immediately after the original tree survey in August 2023, it was stated that the handover from one firm of managing agents to another in November that year had caused difficulties.

**28.** As to why the rest of the Section 20 procedure was not followed after the ‘Notice of Intention’ was issued in February 2024, in Mr. Gough’s statement (Paragraph 22 at Page 32 of the bundle) it was said that:-

*‘Given the critical and urgent nature of the required works to the cedar tree, and given that the tree presented a significant risk to those living at the property, the freeholder took the decision at this time that a continuation of the Section 20 consultation process would unjustifiably and unnecessarily prolong the risks to the leaseholders that had been identified in the survey reports. The freeholder therefore decided not to continue with the full Section 20 consultation process, but instead – given that the up-to-date quotation was towards the lower end of the range of quotations previously obtained – to commission the works immediately with AMP Tree Surgery to avoid any further delay.’*

**29.** As to the delays in actually carrying out the works, the Applicant’s case was that they were informed on the 28 February 2024 (via their management company, HLM) that there were: - ‘*Canadian geese nesting in the cedar tree’*. This was said to have been reported to HLM by ‘...*the First Respondent*’. (Paragraph 23.)

**30.** Mr. Palfrey told the Tribunal that, under the Wildlife and Countryside Act of 2021 wild birds (including Canada geese) were protected whilst nesting, and works on the tree could not be commenced until the geese had left at the end of April.

**31.** It was submitted on behalf of the Applicants that there had not been any undue delay in dealing with the matter, and that there was no dispute about the necessity for nor the cost of the works.

**32.** The Applicants pointed out that the Supreme Court held in *Daejan Investments* *Ltd v Benson and others [2013] UKSC 14 (6 March 2013)* that the correct question for whether or not to grant dispensation is whether, if dispensation is granted, the tenants would suffer any relevant prejudice; and if so, what prejudice would be suffered as a result of the landlord's non-compliance with the requirements.

**33.** The case of *Daejan* was further cited in support of the contention that section 20 requirements are only a means of ensuring that:-

(i) lessees are not required to pay for unnecessary services or services provided to a defective standard; and

(ii) lessees are not required to pay more than they should for necessary services provided to an acceptable standard.

**34.** In terms of the standard of the works, Mr. Gough’s statement (at Paragraph 28) claimed that the works had been carried out competently and that the remains of the tree had been ‘… *crafted into an abundant wildlife habitat.’*

**35.** For all the above reasons, Mr. Palfrey urged the Tribunal to grant dispensation as sought.

**RESPONDENT’S CASE.**

**35.** The Respondents’ case was set out in their detailed objections to the Application, in Mr. D. Wright’s Statement dated 22nd September 2024, and in oral evidence and submissions at the hearing.

**36.** Mr. D Wright confirmed that he did not dispute the need for the tree to be felled, but he submitted that there was ample opportunity for the landlords to have followed the full Section 20 procedure and he and the other flat-owners would have liked to be consulted.

**37.** The Respondents did not accept that the works were sufficiently urgent to justify waiving the Section 20 requirements, particularly in light of the fact that it took approximately 10 months for the contractors to do the work after the date (in June 2023) when the problem was first identified.

**38.** In respect of the delay supposedly caused by the nesting Canada geese, Mr. Wright gave evidence that he, as ‘First Respondent’, certainly never told the management company (as alleged) that there were Canada geese in the tree, nor had he or his son (the tenant) ever seen any Canada geese at the property at all.

**39.** Mr. Hunter, resident of Flat 19 and third Respondent, also gave evidence that he had never seen any Canada geese at the property, and he stated that Canada geese generally nest on the ground near water rather than in trees.

**40.** As for the question of whether the Respondents had suffered any prejudice as a result of the landlord’s failure to consult properly, Mr. Wright stated that the works had not been done to a satisfactory standard. The tree was very substantial: it was a 120 foot Lebanese Cedar, and the large amount of logs and debris just left behind had caused a great deal of trouble to the residents. He told the Tribunal that he and other lessees had all worked together in an effort to deal with the wood and debris left in the communal garden, and they had done their best to make them into attractive features, but he would have preferred to have contractors who removed all the debris after the tree was felled. From his perspective Mr. Wright did not agree that the wood and logs had been ‘crafted’ into any kind of habitat by the contractors.

**41.** Mr. Hunter confirmed that all the remains of the tree had just been left in the garden, including a huge section of the trunk (about 30 foot long) which he described as an ‘eyesore.’ He agreed with Mr. Wright that if the residents had been properly consulted they would have chosen a less costly option which would have included removal of all the material.

**42.** It was pointed out by the Respondents that two of the original quotations as above (Bentons and Treeline) were for significantly less than £7,250, and these two were for works which included complete removal of all the debris, so the Respondents argued that they had also been prejudiced as to cost.

**43.** For all the above reasons the Respondents submitted that dispensation should not be granted.

**FINDINGS AND DETERMINATION.**

**44.** 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/or whether they are recoverable from the leaseholders as service charges.

**45.** Firstly, the Tribunal did not find that there was any good reason for the landlords not to have commenced the Section 20 consultation process as soon as the tree survey report was received in August 2023.

**46.** Secondly, the Tribunal did not find that there was any good reason for the management company’s decision to abandon the Section 20 process after the Notice of Intention was served in February 2024. There was no material change in circumstances nor increased urgency to complete the works at that time.

**47.** The Tribunal found that the absence of consultation resulted from a lack of regard for the views of the residents and lessees rather than from a genuine and urgent need to carry out works.

**48.** In terms of prejudice, the Tribunal found that the Respondents had suffered prejudice as a result of the landlord’s failures because:-

i) they were left with unattractive and inconvenient debris in the communal garden which adversely affected their enjoyment of the same, and

ii) they were expected to pay more for the works than they might have done if they had been properly consulted.

**49.** The Tribunal did not find that granting conditional dispensation would resolve the problem. There is no evidence as to how much it would cost to remove all the material at this stage, and limiting the amount of costs reclaimable from the Respondents would not take away the ‘eyesore’ in the garden.

**50. For the above reasons the Tribunal determines that it is not reasonable to dispense with the Section 20 consultation requirements in the particular circumstances of this case, and the application is refused.**

**Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

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.