



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : HAV/21UC/LDC/2024/0606

Property : Longwood, 1 Fairfield Road, Eastbourne,  
East Sussex, BN20 7LT

Applicant : Longwood (Eastbourne) Management  
Company Ltd

Representative : Oakfield P.M Limited

Respondent : Judith Coe – Flat 2b

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 Members : Regional Judge Whitney  
Mr A Crawford FRICS  
Ms T Wong

Date of Decision : 17 December 2024

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DECISION

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## 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.
2. The application was first received on 2 October 2024, to which the Tribunal issued Directions dated 9 October 2024. The Applicant has subsequently sent an amended application on 9 October 2024, which appears to have crossed with the Directions. These Directions therefore override those Directions dated 9 October 2024.
3. The Property is described in the application as:

Longwood is a substantial detached three storey property with a basement under part of the building footprint which has been converted into 5 flats, probably dating back to the late Victorian or Edwardian period.

Three of the flats are accessible from the Silverdale Road side and two from Fairfield Road.

4. The Applicant explains in the application that:

The applicant seeks dispensation in order to progress important and urgent fire safety work to the basement area of the building. The findings of asbestos materials has halted this work.

The applicant wishes to undertake work urgently to achieve compliance and to protect leaseholders from additional financial burden, the risks being that delay may increase the agreed contract sum for the basement works, and the current building insurance premium will remain very high until this work is finished.

Consultation has not commenced as news of the asbestos issue has only come about as of the 30<sup>th</sup> Sept 2024.

In regard to the planned fire safety works to the basement, consultation was fully completed ahead of this.

The applicant is currently obtaining costs for asbestos removal work required.

Dispensation is requested for all consultation requirements as outlined in this application pertaining to asbestos removal in the basement area and installation of emergency lighting/fire alarm in the same area to comply with recommendations from the building's fire risk assessment.

5. Directions were issued on 9 October 2024 and amended on 14 October 2024 setting a timetable for the exchange of documents preparatory to a determination on the papers.
6. Paragraph 16 of those Directions required the Respondents to complete a reply form and submit any objections to the application by 23 October 2024.
7. The Tribunal has received a reply form from Flat 3 agreeing to the application.
8. One objection has been received from Flat 2b with an attached statement.
9. The Tribunal considered that a hearing is necessary and on 31<sup>st</sup> October 2024 issued directions for the same. A hearing was listed by video for 26<sup>th</sup> November 2024.

## The Law

10. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease, 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.
11. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:  
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.
12. 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.
13. 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.

14. 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).
15. 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.
16. 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.
17. 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.
18. If dispensation is granted, that may be on terms.
19. There have been subsequent Decisions of the higher Courts and Tribunals of assistance in the application of the Decision in Daejan but none are relied upon or therefore require specific mention in this Decision.

## Hearing

20. The hearing took place by CVP with the panel at Havant Justice Centre on the afternoon of 26<sup>th</sup> November 2024. The hearing was recorded.
21. The Tribunal had a bundle of 247 pdf pages and references in [ ] are to pdf pages within that bundle.
22. The Applicants were represented by Samantha Hensher from Oakfield PM Ltd and Mr Knight of Flat 3 was in attendance as a leaseholder and director of the Applicant. Ms Coe attended with her brother Mr Coe to assist her.
23. The hearing was recorded and so what is set out below is a precis only of the hearing.

24. Ms Hensher explained that dispensation was sought as per the application form [9] in connection with the removal of asbestos and certain further fire safety works:

*"Dispensation is requested for all consultation requirements as outlined in this application pertaining to asbestos removal in the basement area and installation of emergency lighting/fire alarm in the same area to comply with recommendations from the building's fire risk assessment."*

25. She explained that the local fire authority had served a Notice on the freeholder[62-63]. She explained a consultation had been undertaken for such works however the contractor had discovered asbestos in the basement which needed to be removed and further additional fire works were required as per the application. These costs were not included within the consultation.
26. Ms Hensher suggested works needed to be undertaken. Mr Knight advised he believed the likely cost would be in the order of £24,000 inclusive of VAT but the Applicant had identified costs savings in respect of the fire safety works.
27. The Tribunal Chair then explained for the benefit of all present the case of Daejan v. Benson referred to above.
28. Ms Coe then presented her objection. She explained shortly after she purchased in 2020 her brother visited and advised that fire works were required. She told the company and suggested they ignored her so she contacted the fire authority. She felt the works were a matter of urgency. Ms Coe and her brother explained that she felt excluded by the Applicant in any decision making.
29. Ms Coe suggests that works have been undertaken in the basement relating purely to flat 1b particularly in relation to pipework and cabling. In her view these basement works were not urgent and works to the rest of the building were more pressing.
30. Ms Coe was of the view that the other leaseholders should not be responsible for any costs associated with anything relating to pipework, cabling and the like relevant to flat 1b only. This should be for that flat's account. Her view is that a lot of such works are not works for which the leaseholders should contribute by way of service charge and alternative solutions could be considered.
31. Ms Coe also referred to the fact the cost of insurance was now at a very high rate due to the fact these works had not been undertaken. She has not been consulted and not given a voice. In her opinion the cellar is no longer used as a communal feature, being used by one leaseholder only and funds should not be spent making it usable.

32. She explained she was not aware of the problems when she purchased. Her solicitor had not made her aware that there was no asbestos risk assessment. She considered this one of the directors' responsibilities and appeared to suggest past directors were responsible.
33. Her view is the basement is enormous and the meters could be moved negating the need for all these very expensive works. Further in any event she suggests her access is obstructed and so it is not a shared space. The company generally never gives any thought to forward consultation.
34. In reply Ms Hensher explained the fire safety works are already underway. Her view is that the asbestos must be removed and the other issues Ms Coe raises are distinct from this application.

## Decision

35. We thank all parties for their considered and helpful submissions.
36. Ms Coe clearly feels her views are not considered and listened to and it would be for the benefit of all parties if the parties could attempt to have a constructive dialogue. All have interests in the building and the ongoing maintenance of the same.
37. We must record that in making this decision we are only considering whether or not dispensation from consultation should be given. That is a discreet jurisdiction and in reaching our conclusion we make no findings as to how the company is run or as to any leaseholders' liability to pay or the reasonableness of any associated charges.
38. It seems from Ms Coe's evidence that when she purchased her flat the replies to enquiries from the managing agent were not provided to her or explained by her conveyancer. This is something we would have expected a reasonably competent conveyancer to have done. This may then have elicited further enquiries so that Ms Coe understood fully the position.
39. It is clear that fire works were required. Ms Coe in her submissions indicated she considered these urgent, hence bringing the matter to the attention of the fire authority. A consultation was undertaken and a contractor was appointed. It appears to be accepted that the basement of the Property has asbestos. The issue is what to do with it.
40. Ms Coe in her written submissions appears to suggest the basement could simply be sealed off as an alternative to make safe the asbestos. The Applicant however proposes to remove the same and complete the additional fire safety works which have been advised and are in addition to those within the original consultation.

41. We should state we agree that the asbestos should be removed. This is a communal basement. We make no findings as to whether or not Ms Coe is excluded. The leases make clear it is a communal area and it is for the Applicant to maintain. We are satisfied that the removal of the asbestos to make safe is a reasonable course of conduct for the Applicant to take. Further we would in this instance go so far as to say it is the only proper course of conduct given this is a residential building to ensure the permanent removal of the asbestos.
42. We have considered whether or not Ms Coe has suffered any prejudice as a result of the failure to consult. We are not so satisfied. As set out above Ms Coe says she would have suggested a different method but we are satisfied the Applicant's methodology is reasonable and arguably the only reasonable method they could adopt for dealing with the asbestos found in the basement in the course of carrying out the fire safety works.
43. Given we find no prejudice we are satisfied that dispensation should be granted and is granted for the:
- "Dispensation is requested for all consultation requirements as outlined in this application pertaining to asbestos removal in the basement area and installation of emergency lighting/fire alarm in the same area to comply with recommendations from the building's fire risk assessment."*
44. Such dispensation is however conditional upon the Applicant or its agent sending a copy of this decision to all leaseholders within 28 days of the date of this decision.

#### 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](mailto: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.

