FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/29UQ/LDC/2024/0510/BS
Property	:	25/27 High Street, Pembury, Tunbridge Wels, Kent, TN2 4PH
Applicant	:	Trustees of Biala Synagogue Trust
Representative	:	Taylor Surveyors Limited
Respondent	:	Christopher David & Joseph Hoare (First Floor Flat) (1) Timothy Evans (Second Floor Flat) (2)
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	:	Judge N Jutton
Date of Determination	:	20 December 2024

DECISION

Summary of the Decision

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works to make the chimney stacks at the Property watertight and safe.**

The application and the history of the case

2. The Applicant applies for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.

3. The Applicant describes the Property as a block of two flats with two commercial premises on the ground floor. The first Respondents are the lessees of the first floor flat and the second Respondent the lessee of the second floor flat.

4. The Applicant says that the chimney stacks at the Property are not watertight. That as a consequence they are unsafe and represent a danger to the surrounding area, to the structure of the building and to the occupants. That works are required urgently to make the chimney stacks watertight and to make them safe so as to remove the risk they pose to the occupants and to the structure of the building.

5. The Applicant says that a number of estimates for the proposed works have been obtained but given the urgency of the works they cannot be delayed whilst the consultation requirements required by section 20 are carried out.

6. The Tribunal made Directions on 22 October 2024. The Directions provided that the Tribunal was satisfied that the application may be determined on the papers without an oral hearing and that it would proceed accordingly unless a party objected in writing within 7 days of receipt of the Directions. No objections have been received accordingly the Tribunal proceeds to determine the application on the papers.

7. The Tribunal sent a copy of the Directions and the application to each Respondent. The Directions made provision for the Respondents to complete a reply form and return that to the Tribunal and to the Applicant stating whether or not the application was opposed, and if so why. No objections have been received from the Respondents.

8. The Directions made it clear that this application does not concern the issue of whether or not service charge costs arising from the Works will be payable and if so reasonable in amount or of the possible application or effect of the Building Safety Act 2022. That the Respondent leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs of the proposed works, and the contribution payable through the service charges both in general

and in particular because of the provisions of and the protections provided by the Building Safety Act 2022.

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 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.

Decision

1. The Applicant says that works are urgently required to the chimney stacks at the Property to make them watertight and safe. That pending such works the chimney stacks represent a risk to the safety of the occupants, to the structure of the building and to the surrounding area. The Applicant says that estimates for the cost of the proposed works have been obtained by the residents. It is understood that the anticipated cost would trigger the need to undertake the consultation process required by section 20 of the Landlord and Tenant Act 1985.

2. None of the Respondent leaseholders have objected to the application for dispensation from the statutory consultation requirements. There is no evidence before me that the Respondents have been or will be prejudiced because of a failure by the Applicant to undertake the statutory consultation process.

3. In my judgment it is just and equitable to grant dispensation from the statutory consultation requirements in respect of the proposed works to the chimney stacks. I am satisfied on the basis of the evidence before me that works are urgently required to make the chimney stacks at the property watertight and safe, to protect the safety of the occupants and to avoid the risk of damage to the structure of the building and to the surrounding area.

4. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however **Direct** that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.

5. For completeness I confirm that in making this determination I make no findings as to the costs of the works and whether they are recoverable form leaseholders as service charges or of the possible application or effect of the Building safety Act 2022.

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 to the First-tier Tribunal at rpsouthern@justice.gov.uk being 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.

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