FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/21UC/LDC/2024/0620
Property	:	Howard House 7-8 Howard Square Eastbourne East Sussex BN24 4BH
Applicant	:	Howard House Residents (Eastbourne) Limited Southdown Estates Ltd
Representative	:	Southdown Estates Ltd
Respondent	:	The Leaseholders of Howard House Residents (Eastbourne) Limited
Representative	:	None
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	:	I R Perry FRICS
Date of Decision	:	31st December 2024

DECISION

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Summary of the Decision

1. **The Applicant is granted retrospective 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 in relation to clear/make safe asbestos within boiler room. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

2. On 29th October 2024 an application was made for 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.

3. The property is described as a purpose-built block of 27 flats having two entrances, two independent staircases and two lifts. The property is constructed of concrete frame with masonry cavity walls, concrete floors, concrete stairs and in-situ cast concrete balconies with metal railings all beneath a flat roof. There is a communal heating system.

4. The Applicant explains that following a routine inspection asbestos in the boiler room was found to have deteriorated in condition and the room has been isolated awaiting specialist attention.

5. The boiler was due to be serviced ahead of the heating being turned on for the winter. To avoid a delay in turning the communal heating on for the winter the Applicants proceeded with the works required to clear the asbestos. The works were scheduled to start on 18th November 2024.

6. Despite the urgency the Applicants were able to obtain two quotes from specialists and they have accepted the lowest.

7. Whilst there had been no consultation residents had been informed that the works would begin on 18th November 2024.

8. The Tribunal gave Directions on 7th November 2024 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any objections were received.

9. The Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the Directions.

10. On 25th November 2024 the Applicants representative informed the Tribunal that no objections had been received, and none had been received by the Tribunal office.

11. 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 whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The 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, and the contribution payable through the service charges.

The Law

12. 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 / to enter into a Long Term Qualifying Agreement being an agreement of 12 months or more with a cost of more than £100 per annum 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.

13. 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.

14. 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.

15. 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.

16. 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).

17. 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.

18. 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.

19. 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.

20. If dispensation is granted, that may be on terms.

21. 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.

Consideration

22. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and, if opposed, to provide a statement setting out why they oppose it.

23. On 25th November 2024 the Applicants representative informed the Tribunal that no objections had been received and the Tribunal had received no objections directly.

24. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.

25. The reason why dispensation from consultation requirements is said to be required is due to the urgency to complete the works so that the boiler could be serviced before the onset of winter. Given the nature of the works and the fact that it related to the safety and welfare of the building and its occupants, I am satisfied that the qualifying works were of an urgent nature.

26. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.

27. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.

28. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

29. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building as described in this Decision.

30. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works for specialist attention to deteriorated asbestos within the boiler room as outlined at paragraph 4. The Tribunal has made no determination on whether the costs are payable or reasonable. 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.

31. 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.

RIGHTS OF APPEAL

32. 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 the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

29. 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.

30. 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.

31. 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.