



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

Case Reference	: MAN/ooBU/LDC/2024/0032
Property	: Sycamore Court, Sale, M33 5UN
Applicant	: Sycamore Court Management (Leasehold) Company Limited
Representative	: Rendall & Rittner
Respondents	: Residential Long Leaseholders of the Property (see Annex A)
Type of Application	: Application for the dispensation of consultation requirements pursuant to S.20ZA of the Landlord and Tenant Act 1985
Tribunal Members	: Tribunal Judge L. White Tribunal Member S. Kendall
Venue	: Paper determination
Date of Determination	: 4 February 2025

DECISION

Decision of the Tribunal

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) (Section 20ZA of the 1985 Act).

The reasons for this decision are set out below.

The background to the application

1. The Applicant seeks dispensation under Section 20ZA of 1985 Act from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. This retrospective application is dated 01 February 2024.
2. The Property consists of two three-storey buildings with 12 apartments in each building, a total of 24 apartments. The freehold is vested in the Applicant and the Respondents comprise the leaseholders of the 24 apartments.
3. The application relates to emergency repairs at the Property, in particular the supply and erection of scaffolding to carry out necessary works to repair and replace the roof above flats 9 and 11 due to water ingress (“the Works”). The Works were undertaken in January 2024. No consultation was carried out with the Respondents in relation to the Works, which is why the Applicant is now seeking dispensation from the consultation requirements.
4. The Applicant has explained that earlier works to the roof has been undertaken by contractor Kenyon Gough and Regional Construction Group, organised by previous managing agent HML. The initial plan had been for the entire roof to be replaced but due to issue with funds the decision was taken to carry out repairs works to the parts of the roof in most urgent need. When reports of water ingress into flats 9 and 11 were first reported it was not known whether this was a new leak or as a result of the earlier roof works. Investigations had to take place to ascertain the cause as if as a result of the earlier works this would not have required a contribution from the leaseholders.
5. The Applicant obtained quotes for the Works from two contractors:
 - Regional Construction Group - £15,700 plus Vat
 - TJ Joinery - £12,242.62 plus Vat
6. The Works were carried out by TJ Joinery on the basis their quote was the cheapest.
7. The quote from TJ Joinery set out the following works would be undertaken as part of the quote:
 - Supply and erect scaffolding to access roof
 - Remove and store on site up to 100 SQM of existing roof tiles
 - Remove and store on site hip and ridge tiles to enable refitting where required

- Remove and dispose of up to 100 SQM of the existing perished sarking felt and battens
- Supply and install breathable membrane across the stripped structure
- Supply and fit 2" x 1" treated tile batten across structure at the required spacing
- Refit existing tiles back onto roof and replace where required - 5% damage allowance factored in
- Refit using sand and cement mortar to bed the hip and ridge tiles previously removed - 5% damage allowance factored in

8. The Applicant set out in its application that the Works were urgent on the basis that it was winter and both the weather and roof were deteriorating. Further the tenant in flat 11 was suffering from water ingress and was looking at alternative accommodation due to the water ingress. Due to having to carry out initial investigations to clarify whether the water ingress was due to the earlier works, this left insufficient time to proceed through the consultation procedure before winter. The Applicant also states that delaying the works by going through the consultation process could have led to further deterioration of the roof, thus increasing repair costs. As a result of the urgency, no consultation was carried out by the Applicant.

9. The Applicant has confirmed that the Respondents were informed of the intention to make a dispensation application in September 2023 by email. The Applicant has further advised that the Respondents have been provided with the documents required as a result of the Directions Order dated 5 December 2024, by an email dated 19 December 2024.

10. No responses were received from the Respondents. The Directions Order set out that the matter would be dealt with by way of a determination on the papers received unless any of the parties requested a hearing. No request has been made.

11. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination on paper.

12. The documents that were referred to and provided by the Applicant included the Application Notice dated 01 February 2024, Applicant Statement of Case, reasons for urgency, two quotes from Regional Construction Group, one quote from TJ Joinery and Invoice dated 22 January 2024 from TJ Joinery.

The Issues

13. This decision is confined to determination of the issue of dispensation from the statutory consultation requirements in respect of the Works. The Tribunal has made no determination on whether the costs for the Works are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of the costs for the Works as service charges then a separate application under section 27A of the 1985 Act would have to be made.

Law

14. Section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
15. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
16. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
17. Section 20ZA of the 1985 Act relates to consultation requirements and provides as follows:
 - (1) *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.*
 - (2) *In section 20 and this section—“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*
....
 - (4) *In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*
 - (5) *Regulations under subsection (4) may in particular include provision requiring the landlord—*
 - (a) *to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,*
 - (b) *to obtain estimates for proposed works or agreements,*
 - (c) *to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,*
 - (d) *to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and*
 - (e) *to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

18. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
19. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: “Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. Considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
 - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii. in what way their rights under (b) above have been prejudiced as a consequence.
20. Accordingly, the exercise of the Tribunal’s power to dispense is governed by a determination of whether “it is reasonable” to dispense. Lord Neuberger explained in Daejan at [67]: “*while the legal burden of proof would be, and would remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants*”.
21. Daejan gives a direction of travel for the exercise of the Tribunal’s discretion and a clear steer that where the Tribunal is unable to identify relevant prejudice, dispensation should be granted. The Tribunal has to consider whether any prejudice has arisen out of the conduct of the Applicant and whether it is reasonable for the Tribunal to grant dispensation following the guidance set out above in Daejan.

Consideration and Findings

22. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.

23. Applying the Daejan tests referred to above, it is for the leaseholders to demonstrate what they would have done had there been a consultation and the prejudice suffered as a result.
24. The Tribunal is of the view that, taking into account that there have been no objections from the leaseholders, there was no evidence that any leaseholder suffered financial or other prejudice.
25. The Applicant believed that the Works were urgent to ensure that there was no further water ingress and damage to the Property. There had been a delay after when the leaks were first notified to ascertain if the cause of the water ingress was due to earlier works. If this had been the case the original contractor would have had to come back carry out repairs which would have been at a cost to the Respondents. This proved not to be the case but by that time winter was fast approaching which would exacerbate the damage.
26. On the evidence before it, the Tribunal agrees with the Applicant's conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It notes in particular the investigative work first required, that it obtained an alternative quote and that deterioration in the roof and ongoing issues with leaks meant immediate action needed to be taken.
27. Accordingly, the Tribunal grants the Applicant's application for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act.
28. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted by the Applicant in a prominent position in the communal areas of the Property. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must be arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Annex A

List of Respondent Leaseholders

Mrs G Herd
Mr J Knight
Ms SD Green
Miss HE Hughes
Mrs N Orange
C Dunne Financial Services
Miss N Nymeria Taylor & Mrs SA Taylor
K O'Shea
Dr & Mrs Baral
Trixie Limited
C Dixon
C Solomon
Mr M Friend & Mrs K Friend
Mr T Wood
L Dixon
Mr DJ McBurney & Mrs SL McBurney
Mr P Collier
Mrs A Ryan
J Lloyd
Miss L Mawdsley
P Fallon
L Foley
Mr S Adby & Miss N Sanders
Ms AJ O'Keefe & Mr CW Matley