



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

Case Reference	: MAN/ooBY/LDC/2024/0040
Property	: Parkmount, 38 Ullet Road, Liverpool, LS17 3BP
Applicant Representative	: Fiveways Liverpool Limited : Watson
Respondents	: Residential Long Leaseholders of the Property
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 29 May 2024 and was received by the Tribunal on 30 May 2024.
2. The Property is a four-storey converted building comprising of 13 apartments and basement. The freehold is vested in the Applicant and the Respondents comprise the leaseholders of the 13 apartments.
3. The application relates to emergency repairs at the Property, in particular structural installation of steel beams and window lintels to the basement apartment because of dry rot compromising the current materials (“the Works”). The Works were commenced on 10 June 2024 for a period of two weeks. 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 provided an inspection survey dated 25 June 2024 carried out by W. Qurban of Watson, the Applicant’s Representative, following the Works being carried out (“the Report”).
5. It is not known how many quotes the Applicant obtained for the Works prior to these being carried out. No quotes are provided in the paperwork by the Applicant, not even the quote from the contractor who did then carry out the Works. The Works were carried out by PBS (Yorkshire) Limited. The Applicant set out in its application that the Works were urgent on the basis the dry rot posed a severe risk to the structural integrity and safety of the Property. It is noted that no evidence or inspection report is provided prior to the Works being carried out.
6. The Report advised that the Works comprised of:
 - timber flooring and joists replacement in the communal cupboard in the basement;
 - replacement of the existing timber flooring and joists and replaced with new treated timbers;
 - the false ceiling in this area was removed and replaced with the new ceiling being double-boarded to comply with Fire Risk Assessment (FRA) requirements;
 - all areas of dry rot within the work area treated and removed;

- window reveals made good and lintel replacement with a Naylor R6 lintel;
 - the existing steels were propped as required and new steels were supplied and installed in accordance with the details listed on the drawing supplied by Dunster engineers (DWG 23-394/a3/001).
7. The invoice from PBS (Yorkshire) Limited dated 15 July 2024 sets out the cost of the Works as £9,840.00 including Vat (“the Invoice”). It is noted that in correspondence sent by the Applicant’s Representative dated 26 June 2024 to the Respondents the Works are advised to have cost £19,994. No further invoices are provided by the Applicant however the cost of the Works is not a matter for the Tribunal at this time.
8. The Applicant argues that the Works were urgent due to the dry rot affecting the structure of the Property. The Applicant has confirmed that the Respondents have been informed of this application for dispensation and the Tribunal have been provided with copy of a letter sent by the Applicant’s Representatives dated 26 June 2024 which refers to the application to the Tribunal and an email dated 24 December 2024 providing the documents required as a result of the Directions Order dated 11 December 2024.
9. 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.
10. 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.
11. The documents that were referred to and provided by the Applicant included the Application Notice dated 29 May 2024, the Report, the Invoice and correspondence with the Respondents.

The Issues

12. 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

13. 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.

14. 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.
15. 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.
16. 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.*- 17. 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.

18. 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.
19. 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*".
20. 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

21. 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.
22. 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.

23. 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.
24. The Applicant believed that the Works were urgent as the dry rot posed a severe risk to the structural integrity and safety of the Property.
25. 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.
26. 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.
27. 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

Dr White & Dr Turner

Mr Nicholls & Ms Williams

Mr & Mrs Power

Mr & Mrs Lyons

Mr Hall

Prof Duff

Mr Holmes

Mr King

Ms Belch

Ms Hammond

Mr Manning

Ms Flower

Mr Nicholls & Ms Williams