



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

Case Reference : HAV/00ML/LDC/2024/0634

Property : 58 The Drive, Hove, East Sussex. BN3 3PD.

Applicant : Nevill Blandford Associates Limited.

Representative : Sawyer & Co Sales & Lettings Limited
(Katherine Goodsell).

Respondent : The Leaseholders of the eight apartments
within the Property.

Type of Application : To dispense with the requirements to consult
lessees about major works.
Section 20ZA of the Landlord and Tenant Act
1985.

Tribunal : Judge C A Rai.

Date of Decision : 10 March 2025.

DECISION

This is a formal order of the Tribunal which must be complied with by the parties.

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

Summary of the Decision

- 1. The Applicant is granted 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 the works outlined in the notice of intention to leaseholders sent by the managing agent when the contractor progressing major works identified additional problems with the roof. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

2. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 and from the consultation requirements imposed on the landlord by Section 20 of the same Act. The application was received on 21 November 2024.
3. The Property is described in the application as a:
A converted detached five storey houses containing eight units.
4. The Applicant explains in the application that;

Major works were progressing to repair the roof, as per the surveyor's recommendations to endeavour to stop water ingress into the top floor flat. Unfortunately, in stripping back some of the pitches, a number of further issues were noted to 3 flats roofs to the front and north elevation. Works to these roofs were completed back in 2020 but without the benefit of any guarantee. However, we have been able to contact the contractor who is in agreement to return to carry out some of the required repairs to these areas only. We have referred this to the surveyor to see if this is suitable.

Unfortunately, the surveyor overseeing the previous major works project, which included these works were, passed away partway through the project, so the scaffolding was down to these elevations without obtaining sign off (sic).

The surveyor on this project has advised the leaseholders that the only way to offer a complete solution to the roof leaks would be to strip and re-surface the three dormers. It might be possible to carry out patch repairs to get the roof watertight in the short-term, but without any guarantee of success.

With the above in mind and, taking into account the roof pitches currently have the underfelt exposed so are not sufficiently watertight, as soon as there are sufficient funds, these additional works will be started.

We have sent a notice of intention for the additional works required. However, we are unable to complete a Statement of Estimates as the works are already partway through with another contractor. The Applicant anticipates that it will be very difficult to find an alternative comparable quote which will accommodate the use of the scaffolding already in situ.

Plus, as per the above response, there is an urgency to make the roof watertight as soon as possible to avoid the internal damage to the top floor flat worsening.

Additional problems with the roof of the Property have been identified because of the access made possible by the scaffolding. The Applicant believes this is outside of the scope of the original section 20 notice and documentation. The work is required urgently to ensure that the building is made watertight and so that no unnecessary excessive costs are incurred with regard to further scaffolding etc. The contractor and surveyor have advised that if temporary repairs were made initially in order to make full repairs at a later date the roof would need to be re-stripped to carry out the additional works and the cost of further scaffolding would be incurred. This would amount to a considerable additional sum which would not be cost effective for the leaseholders.

And further

We will be unable to wait for full consultation and seek dispensation in order to proceed with these works as explained above and to make the building watertight.

5. The Applicant provided a comprehensive description of the additional works that are now required and has confirmed that a notice of intention has been sent to the Leaseholders.
6. The Tribunal gave Directions on 3 February 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
7. 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. No party has objected to the application being determined on the papers.
8. **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

9. 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.
10. 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.
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 lessees.
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. 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

19. 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.
20. Reply forms have been returned by, or on behalf of all the leaseholders.
21. The Applicant's representative confirmed in an email to the tribunal dated 18 February 2025 that it had not received any objections to the application.
22. 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.
23. The reason why dispensation from consultation requirements is to enable the scaffolding, which was erected to enable other works, to be used to facilitate the additional urgent works identified whilst the other works were being undertaken. Proceeding with all the work at the same time will be more cost effective, particularly as the ongoing works have left parts of the roof vulnerable to water ingress. The presence on site of the current contractor would make it very difficult to find alternative comparable quotations and the urgency of making the building watertight has prompted the application for dispensation. I am satisfied that the qualifying works are of an urgent nature.
24. There has been no objection to the dispensation with the consultation requirements from any of the Lessees.
25. 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.

26. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
27. 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. This dispensation is conditional upon the Applicant serving a copy of this Decision on all the Lessees within 14 days of it receiving a copy of this Decision.
28. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works outlined at paragraph 4. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee should wish to challenge the payability or reasonableness of those costs, a separate application to this Tribunal under section 27A of the Act may be made.
29. In reaching my decision I have taken account of the fact that no party has hitherto objected to the application. The Lessees have been afforded the opportunity to raise any objection and have not done so.

Judge C A Rai

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 the Regional office which has been dealing with the case by email at 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.
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.