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

| | | |
|---|---|---|
| **Case Reference** | **:** | HAV/29UL/LDC/2024/0632 |
| **Property** | **:** | Knoll Court, 31 Cheriton Gardens, Folkstone, Kent, CT20 2aP |
| **Applicant** | **:** | Knoll Court RTM Company Limited |
| **Representative** | **:** | Warwick Estates |
| **Respondent** | **:** | The Leaseholders Flats 1-9 |
| **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** | **:** | 4 April 2025 |

---

**DECISION**

---

## 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 in respect of works carried out to fit 2 layer felt over the roof of the Property to stop the ingress of water into Flat 7.**

## The application and the history of the case

2. The Applicant applies 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 Applicant says that the Property is a residential block containing 9 flats. Retrospective dispensation is sought in relation to urgent works to repair the roof of the Property to prevent the ingress of water into Flat 7 (the Works). The Works have been carried out. There is with the application an invoice form a company called Prospect Flat Roofing Limited in the sum of £7,800 which describes the Works as '*Two layer felt over of existing roof*'.

4. The Applicant says that there had been a leak from the roof into flat 7. The leak had worsened and it was decided that due to bad weather the Works had to be carried out as a matter of urgency. That there was insufficient time to delay the Works pending completion of the statutory consultation process.

5. The Tribunal made Directions on 28 February 2025. 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 14 days of receipt of the Directions. The Tribunal is told by the Applicant's representatives that no objections have been received. Accordingly the Tribunal proceeds to determine the application on the papers.

6. The Directions also provided for the Applicant to send to each Respondent the application and the Directions. 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 stating why. The Tribunal is told that no objections have been received from the Respondents.

7. 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**

8. 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.

9. 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".

10. 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.

11. 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".

12. 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).

13. 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."

14. 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.

15. 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.

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

17. 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

18. The Applicant says that the Works were required to be carried out urgently because of bad weather. Had they not been carried out then the ingress of water into flat 7 would have worsened. That as such there was insufficient time to complete the statutory consultation process.

19. I am satisfied from the evidence before me that it was in the best interests of the Respondents for the Works to be carried out as soon as possible. That if the Works had been delayed whilst the statutory consultation process were carried out the ingress of water into flat 7 may have worsened with potential health and safety consequences. Further ultimately the extent and the cost of the repair work may have increased.

20. None of the Respondent leaseholders have objected to the application for dispensation from the statutory consultation requirements.

21. There is no evidence before me to the effect that the Respondents are prejudiced by the failure on the part of the Applicant to complete the statutory consultation process in respect of the Works. In my judgment it is just and equitable to grant retrospective dispensation from the statutory consultation requirements in respect of the works to repair the roof so as to prevent the further ingress of water into Flat 7.

22. 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.

23. 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, whether they are

reasonable in amount or of the possible application or effect of the Building safety Act 2022.

Judge N Jutton

4 April 2025

**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 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