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

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| **Case Reference** | **:** | MAN/00CJ/LDC/2024/0056 |
| **Property** | **:** | 54 Clifton Road, Newcastle upon Tyne, Tyne & Wear, NE4 8DQ |
| **Applicant** | **:** | Karbon Homes Limited |
| **Respondents** | **:** | Sarah Kelly<br>Andrew Wright<br>Estate of John Tate<br>Paul Megson<br>Hannah Carrithers |
| **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<br>Tribunal Member J. Gittus |
| **Venue** | **:** | Paper determination |
| **Date of Determination** | **:** | 28 March 2025 |

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**DECISION**

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## Decision of the Tribunal

The Tribunal grants the application for the dispensation of all 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) in relation to the works to the roof of the building and internal plasterwork repairs.

The reasons for this decision are set out below.

## Background

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. Those requirements ("the Consultation Requirements") are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").

2. The Tribunal did not inspect the Property but we understand the Property is a three-storey building comprising of 5 apartments and internal common areas. The freehold is vested in the Applicant and the Respondents comprise the leaseholders of the 5 apartments.

3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the Consultation Requirements.

4. The statement of case dated 28 January 2025 confirmed the following works were subject to the application for dispensation:

   (a) Roof repairs which included work to the lead lined guttering, roof slates repairs and mortar joint to roofline including provision for cherry picker or scissor lift for access to roof

   (b) plasterwork repair to front elevation following completion of roof works

   collectively ("the Works")

5. 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.

6. The statement of case included a quotation from Hodgson Sayers dated 14 June 2024 in the sum of £ 4,123.60 excluding VAT. No invoice has been submitted for the Works. The statement of case included a letter sent to the Respondents 29 July 2024 which advised that the roofing works had been completed.

7. The Applicant has confirmed that the Respondents were informed of the intention to make a dispensation application in a letter sent 29 July 2024. The Applicant has further advised that the Respondents have been provided with the documents required as a result of the Directions Order made 23 January 2025 and that no responses have been received.

8. The Directions Order dated 23 January 2025 set out that the matter would be dealt with by way of a determination on the papers received unless any of the parties made representations within 35 days of the date of those directions. No representations have been made.

9. As detailed above the Tribunal did not inspect the Property and it considered the documentation and information before it in the set of documents prepared by the Applicant.

## Grounds for the application

10. The Applicant set out in its application that the Works were urgent on the basis they were required were to prevent water ingress to the Property.

## The Issues

11. 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

12. Section 18 of the 1985 Act defines what is meant by "service charge". It also defines the expression "relevant costs" as:

> *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

13. Section 19 of the 1985 Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

> *Where this section applies to any qualifying works … the relevant contributions of tenants are limited … unless the consultation requirements have been either–*
>
> *(a) complied with in relation to the works … or*
>
> *(b) dispensed with in relation to the works … by the appropriate tribunal.*

14. "Qualifying works" for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the 1985 Act and regulation 6 of the Regulations).

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 (1) of the 1985 Act relates to Consultation Requirements and provides as follows:

> *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.*

18. Reference should be made to the Regulations themselves for full details of the applicable Consultation Requirements. In outline, however, they require a landlord (or management company) to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

19. 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.

20. 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.

21. 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*".

22. 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**

23. The Consultation Requirements are intended to ensure a degree of transparency and accountability when a landlord (or a management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken.

24. In deciding whether to dispense with the Consultation Requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the Consultation Requirements. If there is no such prejudice, dispensation should be granted. 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, and as there is no indication that the leaseholders in this case have suffered any prejudice as a consequence of the failure to comply with the Consultation Requirements, the application in relation to the Works is granted.

25. Nevertheless, the fact that the Tribunal has granted dispensation from the Consultation Requirements for the Works should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the Works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard – but we do consider it appropriate to make the following general observation in the particular circumstances of this case being that as with any claim for service charges, leaseholders of the Property will only be liable to contribute towards the costs of remediating the Property if and to the extent that such costs (i) are contractually payable under the terms of their leases; and (ii) are reasonably incurred.

## 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).