



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

Case Reference : **MAN/30UD/LDC/2024/0608**

Property : **Osborne Grove, 367 Colne Road,
Burnley BB10 2LB**

Applicant : **Osborne Grove (Burnley)
Management Company Limited**

Representative : **Matthew Trubow**

Respondent : **The Leaseholders (see Schedule
attached to the Application)**

Type of Application : **Application for the dispensation of
the consultation requirements
provided for by section 20 of the
Landlord and Tenant Act 1985**

Tribunal Members : **Judge Watkin
Mr S Wanderer MRICS**

Date and Venue of Hearing : **Paper Determination 28 April 2025**

Date of Decision : **28 April 2025**

DECISION

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Decision

The Application is granted.

The Applicant is permitted to dispense with the requirements of section 20 Landlord and Tenant Act 1985 in respect of the qualifying works carried out to the stone wall at Osborne Grove between 1 October 2024 and 10 November 2024.

The Background

1. The Application dated 26 October 2024 is made on behalf of Osborne Grove (Burnley) Management Company Limited (the “Applicant”), in relation to Osborne Grove, 367 Colne Road, Burnley BB10 2LB (the “Property”). The Respondents are the leasehold owners of flats within the Property (the “Respondents”).
2. By the Application, the Applicant seeks a determination from the Tribunal that it is reasonable to dispense with the section 20 requirement to consult leaseholders in respect of qualifying works to the Property.
3. The Property is located on gated premises and comprises a three-storey building containing 12 purpose built three-bedroom flats. It has a common garden area and car park.
4. The proposed works related to the emergency repair of a collapsed section of an old stone wall surrounding the Property. The wall collapsed unexpectedly, presenting a risk to health and safety. As such, urgent works were carried out to remove the immediate hazard and to restore stability.
5. The works were carried out by a professional contractor. They commenced on 1 October 2024 at a total cost of £5,750. At the time of the Application £3,750 had already been paid. The consultation process was not carried out due to the urgency. At the time, it was also the Applicant’s understanding that the works would be covered by the insurers. However, the insurers have subsequently declined to provide cover and a letter was issued to the leaseholders outlining the emergency nature of the works, the costs, and the intention to apply for dispensation.

The Law

6. Section 20(1) Landlord and Tenant Act 1985 provides:
 - (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*
 - (a) *complied with in relation to the works or agreement, or*
 - (b) *dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal].*

7. S.20ZA of the Act reads as follows:

Consultation requirements: supplementary

(1) *Where an application is made to [the appropriate 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.*

8. The consultation requirements are set out at schedule 3 of the Service Charges (Consultation Requirements) (England) Regulation 2003.

9. In the case of ***Daejan Investments Ltd v Benson [2013] UKSC 14 (“Daejan”)***, the Supreme Court noted the following:

- a. The only express stipulation within section 20ZA(1) in relation to an application to dispense with the consultation requirements is that the tribunal must be “*satisfied that it is reasonable*” to do so.
- b. The purpose of the requirements is to ensure that the tenants are protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, the tribunal focus should be on the extent to which the tenants are prejudiced in respect of the failure to comply.
- c. The “*main, indeed normally, the sole question*” for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements. (Paragraph 50).
- d. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- e. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements and it would not be convenient or sensible for the Tribunal to distinguish between “a serious failing” and “a technical, minor or excusable oversight”, (paragraph 47).
- f. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms imposed are appropriate.
- g. The Tribunal has power to impose a condition that the landlord pays the tenants’ reasonable costs (including surveyor and/or legal fees) incurred in connection with the application under section 20ZA (1).
- h. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some “relevant” prejudice that they would or might have suffered is on the tenants/leaseholders.

- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- j. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

Directions

10. Directions were issued to the parties on 20 February 2025 indicating that the Application appeared suitable for determination by way of submission of written evidence and requiring:
 - a. The parties to notify the Tribunal within 42 days if they wish to make oral representations at a hearing before the Tribunal.
 - b. the Applicant to send the Tribunal and the Respondent a bundle of documents containing a statement of case and other information relied on within 21 days.
 - c. any Respondent who opposes the Application to send to the Tribunal and the Applicant any statement in response (together with any other documents relied on) within a further 21 days.
11. It is not understood that either party indicated that they wished to make oral submissions at a hearing. As a result, the Application has been determined without a hearing.

Documents

12. The Tribunal has had the opportunity to consider the 17-page bundle of documents provided by the Application (the "Bundle").
13. The Bundle contains a three-page statement of case provided by the Applicant explaining that the work was carried out without compliance with the dispensation requirements due to urgency caused by the potential risk to health and safety. A contractor's report is also provided by Driver's Building and Roofing (the "Contractor Report"). No alternative quotes are provided, and no reasons are given as to whether an alternative quotation was obtained prior to the works being carried out.
14. No statement in response was received from any of the leaseholders. Therefore, based on the wording of the Directions, it would appear that the Respondents do not object to the award of the dispensation.

Decision

15. Pursuant to *Daejan*, the Tribunal considers whether the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in the circumstances of this Application. The Leaseholders must be protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, and whether the leaseholders may suffer prejudicial from the consultation not having taken place.

16. The Tribunal notes that the Applicant contends that the works were urgent. It is apparent that the works were also carried out on an urgent basis. The contention that the works were required urgently is supported by the Contractor Report and no response has been received from the Respondents to suggest otherwise.
17. Whilst it is not clear whether alternative quotes were obtained and, if not, no reason is given for not doing so. However, the Tribunal has no reason to consider that appropriate works could have been carried out at a lower cost.
18. In the circumstances, there is no suggestion that the Respondents would be prejudiced by the grant of the dispensation.
19. The Tribunal considers that, in all the circumstances, it is reasonable to dispense with the consultation requirements.

Appeal

20. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

28 April 2025

Appendix

Respondent Leaseholders

Carol Jeffrey

Cassandra Thompson

Roland McKillop

Mark Wade

Brian Crossley

Della Trubow

Matthew Trubow

Pamela Kilburn

Mike Benyon

Juliette Jervis

Callum Fergeson

John Morgan

Chris Anson

Jim Ogden