



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY

Case reference : MAN/OOCM/LDC/2024/0041

Property : 10 - 13 Waltham, Washington, Tyne & Wear, NE38 7JY

Applicant : Gentoo Group

Respondents : Various Long Residential Leaseholders

Type of Application : Landlord & Tenant Act 1985 - Section 20ZA

Tribunal Members : Mr N Swain MRICS
Mr P Mountain

Date of Paper Determination : 22 April 2025

DECISION

DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes a determination to refuse to dispense with the requirement to consult with the Respondents on the works to 10 - 13 Waltham, Washington, Tyne & Wear, NE38 7JY described in Schedule 1.

REASONS

The Application

2. The application ('the Application') was made on 23 May 2024 by Gentoo Group Limited ('the Applicant'). It seeks retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by section 20.
3. Dispensation is sought, retrospectively, for reroofing of the property ('the Works').
4. The Works have been carried out to 10 - 13 Waltham, Washington, Tyne & Wear, NE38 7JY ('the Property'), comprising 4 self-contained residential apartments arranged over two floors. The Applicant is the freehold owner for the Property and the Respondents are the leaseholders of the 3 of the residential apartments (the fourth being owned by the freeholder). Copies of all long leases have been provided, evidencing lease terms of 125 years starting from various commencement dates between 2000 & 2004.
5. The Applicant's statement of case avers that:

The Leaseholder on 13 Waltham initially reported water ingress into the building on 23 October 2023. Our Roofers visited and completed a small repair to replace tiles and felt on 28 November 2023.

Unfortunately, this repair did not resolve the issue as further report of water ingress came from the Leaseholder on 30 November 2023, the reports of water ingress escalated, and the Leaseholder submitted a formal complaint therefore the works needed to be completed as soon as possible. It was identified that there were no other options but to replace the roof, as the property was experiencing ongoing water ingress and the tenant living in property had a small child. This making the living conditions poor for the Leaseholder's tenants.

6. The Application seeks dispensation for the works detailed in Schedule 1.
7. Directions in the present case were issued on 29 January 2025. The Applicant submitted a bundle of papers including a statement of case and supporting documents. One of the Respondents submitted a statement to the tribunal opposing the Application. The Applicant has confirmed that none of the other Respondents has submitted any objections to the Application directly to itself. The Applicant submitted a response to the Respondents bundle
8. The Applicant indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because neither party had requested a hearing and because there was sufficient information before the tribunal to reach a

decision. It was unnecessary to conduct an inspection of the Property in view of the matters in issue.

The Law

9. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 2. Section 20ZA subsection (1) provides that the tribunal may make a determination to dispense with consultation requirements 'if satisfied that it is reasonable to dispense with the requirements'.
10. The tribunal considers the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('Daejan') to be the leading case on dispensation. In *Daejan* Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants. Lord Neuberger went on to hold that a tribunal is permitted to grant dispensation on terms, including compensating leaseholders for any prejudice suffered by requiring a landlord to reduce the amount claimed as service charge, and including an order for costs.

Findings of fact and Reasons for decision

11. The witness statement from the Applicant's Maintenance Assistant Manager clearly identified that the roof was in a poor state of repair and that replacement was the most cost effective solution. The witness statement also identified the poor condition of the existing roof tiles.
12. There was no formal action from a regulating body requiring the work to be undertaken within any specific timeframe. The formal complaint was purely an internal process to the Applicant's business.
13. At no point did the Applicant engage in any consultation, either formal or informal, with the Leaseholders over the repairs, other than the Leaseholder whose property was directly affected. The first time that the Respondent knew of the reroofing of the Property was when they received their service charge invoice, several months later.
14. In *Daejan*, it was made clear that the onus was on the Leaseholder to identify the prejudice against them. Firstly, they have to establish what steps they have been prevented from taking as a result of the breach; and then, identifying the way in which their rights have been prejudiced i.e. either paying more than would be appropriate or paying for inappropriate works.
15. The Respondent has identified three steps that they have been prevented from taking:
 - a. That they would have had the opportunity to seek alternative quotes for the work.
 - b. That they would have had the opportunity to press for an approach to the insurance company to consider whether a claim against the building policy was possible.

- c. That they would have had the opportunity to challenge the re-using of the old roof tiles, that had been identified as past their useful life.
- 16. The Respondent has identified that they have been prejudiced in two ways:
 - a. Firstly, that they have paid too much for the works, given that it is likely that the insurance policy would have paid out at least in part for the works.
 - b. Secondly, that they have received inappropriate works due to the poor decision to re-use the existing roof tiles.
- 17. In Daejan, the application was approved subject to a reduction of £50,000 in the cost payable by the Leaseholders, as this was considered sufficient compensation for the prejudice suffered. In this case, it is accepted by the Applicant that there are ongoing issues with the roof leaking and they have offered to not charge the Leaseholders for any further repairs until the end of the 2024-25 financial year.
- 18. The Tribunal does not consider that this offer can be considered as compensation, as the amount of compensation is not specified and is time bound, when there is no clarity over how long it will take to fully resolve the issue.
- 19. Nor is the Tribunal in a position to determine the likely cost of putting the inappropriate work right.
- 20. Therefore, the Tribunal considers the most appropriate course of action is to refuse the application to dispense with the consultation requirements of the Act.

Schedule 1

'the Works'

1. Re-roofing of the Property.

Schedule 2

Extracts from legislation

Landlord and Tenant Act 1985

Section 20

(Subsections (1) and (2):)

(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) a tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

Section 20ZA

(Subsection (1))

(1) Where an application is made to a 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.