



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY

Case reference : MAN/00FF/LDC/2024/0023

Property : 1 -11 Phoenix Boulevard, York, YO26 4WY

Applicant : St. Peter's Quarter Residents Association Limited

Applicant's Representative : Mulberry PM Limited

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

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DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes a determination to dispense with the requirement to consult with the Respondents on the works to 1 -11 Phoenix Boulevard, York, YO26 4WY described in Schedule 1.

REASONS

The Application

2. The application ('the Application') was made on 22 July 2024 by St. Peter's Quarter Residents Association Limited ('the Applicant'). It seeks 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 for repairs to the ridge tiles and box gutter felt work ('the Works').
4. The Works are to be carried out to 1 -11 Phoenix Boulevard, York, YO26 4WY ('the Property'), comprising 6 self-contained residential apartments arranged over three floors. The Applicant is the management company for the Property and the Respondents are the leaseholders of the 6 residential apartments. A sample lease evidences a current lease term up to and including 31 December 2150.
5. The Applicant's statement of case avers that:

In January 2024 reports were made of leaks into the top floor properties of 1-11 Phoenix Boulevard (9 and 11). A contractor was instructed to attend to review the works needed and found the felt lining of the box gutter, surrounding sections of the pitched roof, were allowing water to enter the loft space below and that ridge tiles required repointing.

Mulberry PM instructed the contractor to complete the works as the leaseholders would have been unable to reside in the property due to Health and Safety risks and have impacts if further leaks occurred. These risks included possibilities of damage to plaster board resulting in the ceiling to deteriorate, as well as implications of water settling in the material of the building and developing mould and damp issues. If alternative accommodation was required due to delays with works being completed, this would have incurred additional costs to leaseholders.

6. The Application seeks dispensation for the works detailed in Schedule 1.
7. Directions in the present case were issued on 17 January 2025. The Applicant submitted a bundle of papers including a statement of case and supporting documents. None of the Respondents submitted a statement to the tribunal opposing the Application and the Applicant has confirmed that none of the Respondents has submitted any objections to the Application directly to itself.
8. The Applicant indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because none of the Respondents opposed the Application, 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. None of the Respondents have submitted a statement of case opposing the Application. There is no evidence before the tribunal that any of the Respondents consider themselves to be prejudiced in any way by the absence of a section 20 consultation exercise.
12. The Applicant engaged with the Respondents on its proposals to undertake the Works.
13. The tribunal finds that there is no relevant prejudice identified by any Respondent, suffered as a consequence of the Applicant proceeding with the Works without first carrying out the section 20 consultation.
14. The Respondents have made no representation as to any condition the tribunal might impose in granting dispensation, and there is no evidence of any cost being incurred by the Respondents that should appropriately be met by the Applicant.
15. In these circumstances, the tribunal considers it reasonable to dispense with consultation requirements unconditionally. Accordingly, the tribunal makes a determination under section 20ZA of the Act to dispense with the requirement to consult with the Respondents under section 20 in relation to the Works.
16. The tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works are of a reasonable standard or whether the element intended to be recovered by way of service charge is payable, within the meaning of sections 19 and 27A of the Act. The tribunal's decision does not include or imply any determination of such matters.

Schedule 1

'the Works'

1. Repointing of the ridge tiles.
2. Cleaning out box gutter and re felting.

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.