



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

Case reference : CHI/00MR/LDC/2024/0035

Property : Holmes Park, 128 Milton Road, Southsea,
Hampshire PO4 8GU

Applicant : Churchill Estates Management Limited

Representative : Churchill Retirement Living Limited

Respondents : The leaseholders of the Property

Type of Application : Application for the dispensation of
consultation requirements pursuant to S.20ZA
of the Landlord and Tenant Act 1985

Tribunal Members : Judge Hugh Lumby

Venue : Paper determination

Date of Decision : 5 June 2024

DECISION

Decision of the Tribunal

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

The background to the application

1. The Applicant seeks 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. This retrospective application was received on 12 February 2024.
2. The Property is a three storey development of twenty two flats. The freehold is vested in the Applicant and the Respondents comprise the leaseholders of the twenty two flats.
3. The application relates to emergency repairs at the Property to repair leaks to Flats 16 and 21. The work was carried out in the period 6th to 15th December 2023. No consultation was carried out with the Respondents in relation to the works, which is why it is now seeking dispensation from the consultation requirements.
4. The Applicant has provided a detailed account of events. Following damage during heavy rain and high winds during the week of 30th October 2023, the Applicant sought quotations for works affecting Flats 16 and 21. Only one quotation was obtained, the Applicant explaining that other contractors were too busy either to provide a quotation or carry out the works urgently. In the face of further stormy weather, the Applicant accepted the one quotation it had received. In the meantime, the rain penetrated Flats 16 and 21, causing damage and entering their electric circuits and causing various hazards, including the risk of fire.
5. The Applicant explained that the works comprised the provision of scaffolding and a skip together with work to Flat 16 to remove all roof, ridge and hip tiles in area affected by the leak, supply and replace new roof tiles and repoint and replace the dry ridge system. The works to Flat 21 comprised removing all roof tiles, felt and battens in area affected by the leak, refitting felt and battens, ensuring overlap to adjoining apartments, repointing and supplying and replacing damaged roof tiles.
6. The works cost £7,951.29, which is broken down as to labour costs of £4,200, scaffolding and tower hire costs of £2,710, skip hire of £244 and the costs of materials of £777.29.
7. The Applicant argues that the works were urgent for various reasons, including the water entering the circuitry meant that continued

occupation was hazardous to the occupiers of the affected flats, which would have required a decant over the Christmas period. The increased fire risk could have affected all residents. There was in addition an urgency to complete the works to prevent further water ingress and damage to other parts of the Property. It was not practical given this urgency and the issues with obtaining other quotations to obtain a second quotation or go through a consultation process.

8. As a result of the urgency, no consultation was carried out by the Applicant, who says that this is being carried out in conjunction with the dispensation application.
9. The Applicant has confirmed that the Respondents have been informed of this application. Five responses were received, covering six of the apartments. One contained an objection but was happy for the application to be determined on the papers.
10. The objection came from Mr Stephen Nowell, the leaseholder of Flat 3. He argues that the cost of the works should have been covered by insurance. In addition, by only obtaining one quotation, it is not possible to ascertain whether the price quoted was reasonable. He argues that the Applicant did not provide information to leaseholders in conjunction with its search for another contractor, so preventing discussion as to the appropriate way forward. He questioned whether temporary fixes may have been available, such as the use of a tarpaulin, so allowing more time to obtain other quotations and conduct a consultation. Finally, he was concerned at the quality of the work undertaken.
11. The Applicant has responded to the objection. It explained that the insurers were approached about a claim but were told that damage from wear and tear or gradual deterioration were excluded under the policy. It argues that arguments about cost are not relevant to this application and that the contractor used was one the managing agents knew to be trustworthy and reputable. It contends that temporary solutions were considered but not found to be viable; a tarpaulin was not appropriate given the expanse of roof and the inability to secure it and in any event temporary works would have led to increased overall costs
12. By Directions of the Tribunal dated 11 April 2024 it was decided that the application be determined without a hearing, by way of a paper case.
13. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
14. This has been a paper determination which has been consented to by the parties. The documents that were referred to are contained in 185 page bundle which included the Applicant's application, a specimen lease, an

objection from one of the Respondents, information relating to the works and insurance plus the Tribunal's Directions dated 11 April 2024 and a case summary of the Daejan case referred to below, the contents of which has been recorded.

The issues

15. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

Law

16. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
17. 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.
18. 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.
19. Section 20ZA relates to consultation requirements and provides as follows:

"(1) 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.

*(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of*

the landlord or a superior landlord, for a term of more than twelve months.

....

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Findings

7. 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.
8. 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. In 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.
- 16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the Applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

Consideration

- 17. 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 applicants, the Tribunal determines the dispensation issues as follows.
- 18. The Tribunal began by considering the objections raised by Mr Nowell, to see whether any prejudice was identified by him.
- 19. His first objection is that the cost of the works should have covered by the insurance policy. The Applicant contends that the policy does not cover the situation in question. In any event, this is an issue relating to the payability and reasonableness of service charges rather than any prejudice by a failure to consult. As referred to above, that is not the question before the Tribunal in this application. Mr Nowell can bring an application pursuant to section 27A if he considers that the insurance policy does cover the sums incurred as this would impact on the sums payable by leaseholders.
- 20. The second objection was that the Applicant should have been open about the process and by obtaining only one quotation, it could not be ascertained whether the works were too expensive. He does not identify how a failure to consult has caused him prejudice. Questions of cost are again for applications relating to reasonableness of costs and should be addressed through a section 27A application.
- 21. The third objection related to temporary fixes, Mr Nowell arguing that these should have been adopted to allow more time for a consultation and the obtaining of a second quotation. The Applicant argues that there was no effective temporary solution and addressing the issue promptly was the only option. The Tribunal agrees, on the evidence before it, that temporary solutions would not have been successful and so this was not a practical option.

22. Finally, Mr Nowell has concerns about the quality of the workmanship. This is not an issue which would have been solved by a prior consultation as the quality of the workmanship would not be known at that point. As a result, no prejudice has been demonstrated. In any event, questions of quality of workmanship go to the payability and reasonableness of service charges and so should be addressed through a section 27A claim.
23. Applying the Daejan tests referred to above, it is for the leaseholder to demonstrate what he would have done had there been a consultation and the prejudice he has suffered as a result. In this case, Mr Nowell has not identified what he would have done if there had been a consultation and what prejudice he has suffered as a result. Accordingly, on the evidence before, the Tribunal cannot identify any prejudice suffered by him by the failure to consult.
24. The Tribunal is of the view that, taking into account that there have been no objections from the other leaseholders, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the urgent works to the Property.
25. The Applicant believed that the roof works were urgent to ensure that there was no further water ingress and damage to the Property. It cited health and safety risks, both to the flats in question and to the wider Property in relation to water getting into the electric circuitry. It also argues that it was not possible to seek any further for second quotations given the imminent forecast storms and the Christmas period.
26. On the evidence before it, the Tribunal agrees with the Applicant's conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It notes in particular that the deterioration in the roof and the ongoing issues with leaks meant that immediate action needed to be taken. As Mr Nowell notes, communication with leaseholders could have been better but that does not obviate the need to get on with the works. The fact of the leaks, the ongoing forecasts for storms and the difficulties in obtaining contractors at reasonable cost over the Christmas period mean that progressing the works urgently was a reasonable decision and in such circumstances it is reasonable to grant dispensation. This would be the case even if the issues raised by Mr Nowell did lead to a finding of prejudice.
27. Accordingly, the Tribunal grants the Applicant's application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.
28. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both

on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

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 by email to rpsouthern@justice.gov.uk
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 allow 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.

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
 - the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
 - The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.
- You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

*5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL*

Tel: 0207 612 9710

Goldfax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.gov.uk/appeal-upper-tribunal-lands.