



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

Case Reference : CHI/29UL/LDC/2020/0056

Property : 1 The Leas, Folkestone, Kent, CT20 2DR

Applicant : Mr J Mothersdill

Representative : Comptons Solicitors LLP

Respondent : Champion and Bushell Limited,
The long lessees (see list attached),
1 The Leas Residents Association (1TLRA)

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Judge J. Dobson

Date of Directions : 10th September 2020

DECISION

Decision

1. **The Applicant is granted 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 in respect of the major works to the masonry of the building. The Tribunal has made no determination on whether the costs are reasonable or payable.**

The application and the history of the case

2. The Applicant applied for 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 in respect of the Respondents. The Tribunal gave Directions on 20th June 2020, explaining that the only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements and not the question of whether any service charge costs are reasonable or payable.
3. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any. The Bundle has been provided late, albeit only by a day. The Tribunal is prepared to extend the time for filing and serving the Bundle. Given the matters below, that decision was closer run than it ought to have needed to be. One of the reasons for the slightly late Bundle is said to be a delay in the Applicant's Counsel providing a statement of case.
4. However, there was no Direction for any statement of case on behalf of the Applicant, the application having been directed to stand as his statement of case, and it is plain that the statement of case has been prepared subsequent to the service of the application on the Respondents, as originally named, and after the time for a response from any lessee who wished to respond. The statement of case cannot be properly described as the Applicant's reply to any case advanced by any Respondent, which would in any event have needed to be served by 26th August 2020. The purported statement of case has apparently been served for the first time with the bundle.
5. The statement of case asserts in its first paragraph that it is made pursuant to the Directions given: it is not and accordingly there can be no doubt whatsoever that it should not state itself to be. Such an approach should be expected to attract censure. Neither has any application been submitted on behalf of the Respondent for permission to rely upon any such statement of case. Accordingly, the Tribunal has ignored the statement of case in reaching this decision. Another time, the Tribunal may go further.
6. The Directions also stated that the Tribunal would proceed by way of paper determination without a hearing pursuant to of the Tribunal Procedure Rules 2013, unless either party objected. Neither party

has subsequently objected and requested an oral hearing. The Tribunal has accordingly proceeded by way of a paper determination. This is the decision made following that paper determination.

The law

7. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the Regulations made pursuant to the Act provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to those sums unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made in advance or retrospectively.
8. Section 20ZA provides that on an application for a determination to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation pursuant to section 20ZA of the Act “if satisfied that it is reasonable to dispense with the requirements”.
9. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessor had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”
12. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether or not the Lessee has been caused relevant prejudice by the failure of the Applicant to undertake the consultation prior to the major

works and so whether dispensation from consultation in respect of that should be granted.

13. If dispensation is granted, that may be on terms.
14. The effect of *Daejan* has very recently been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.
15. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

Consideration

16. The Applicant has provided a sample lease (“the Lease”), in particular for the Penthouse apartment, and asserts that the other leases of apartments in the building are in the same or substantively the same terms. The relevant provisions are contained in clauses 1 and 5 and the First and Fourth Schedules of the Lease.
17. The Applicant is the Tribunal- appointed manager of the building pursuant to an Interim Management Order dated 30th June 2020 and as such is responsible for repairs and the collection of service charges from the Respondent pursuant to the provisions of the Lease and the terms of the Order.
18. The Applicant explained in the application that major works are required urgently to masonry to the building which is in poor condition, requiring remedial works to remove any loose sections of concrete and prevent danger. It is said that the issue has been ongoing for a number of years and that the Residents’ Association is supportive of the works. The Applicant anticipates that the work can be undertaken by a contractor utilising abseilers and a cherry-picker. Further details are provided in a letter from Martech Technical Services Ltd dated 3rd July 2019- pp A26 to A29 of the Bundle.
19. Only one lessee of an apartment with the property has responded to the application, who agreed to it. The remaining lessees have not responded at all. None of the lessees have therefore asserted that any prejudice will be caused to them by dispensing with the consultation requirements.
20. The Tribunal finds that nothing different would be done or achieved in the event of consultation, save for the inevitable delay whilst the consultation process was undertaken, where there has apparently

been a long- standing problem and where health hazards exist and such delay would go to prolong and potentially increase those.

21. Accordingly, the Tribunal finds that the Respondent has not suffered any prejudice by the failure of the Applicant to follow the consultation process.
22. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to upgrade the block of flats.
23. 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 reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1968 would have to be made.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.