



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

Case Reference : CHI/00HY/LDC/2022/0079

Property : Various schemes and properties in the South Region

Applicant : Green Square Accord Limited

Representative : Devonshires Solicitors

Respondent : The Lessees

Representative :

Type of Application : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985

Tribunal Member : Judge D Whitney

Date of Directions : 10 November 2022

DETERMINATION

Background

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. The application was received on 13 September 2022.
2. The Tribunal made Directions on 28 September 2022 setting out a timetable for the disposal of the matter which required the Applicant to serve papers on each of the properties the subject of the application.
3. On 3 October 2022 the Applicant made an application to vary the Tribunal's Directions on the grounds that it is not practicable to serve the volume of documents on each property within the time scale provided. Revised directions were issued on 4th October 2022.
4. The Application relates to 3,897 properties in the South Region comprising of rented, shared ownership and long leaseholder flats and the application concerns a qualifying long-term agreement that has yet to be entered into. The Applicant explains that it is making a separate application for dispensation in respect of their properties in the North Region.
5. The Applicant further states "*1.1 The Applicant is a Private Registered Provider of Social Housing formed following a merger between Green Square Group and Accord Housing Association in April 2021. The Applicant provides housing and care services and manages approximately 25,000 properties nationwide.*
1.2 As a result of rising gas and electricity prices, it was decided that it would be desirable for the Applicant to enter into new agreements with an energy broker and to use that broker to procure utility supply agreements.
1.3 Since its merger in April 2021, the Applicant operates on two separate sets of contracts – one set for the South Region which is the legacy GreenSquare Group properties, and one set for the North Region which is the legacy Accord Housing Association properties.
1.4 The contract for the South Region is a fixed price contract which expires on 30 September 2022. The contract for the North Region is a capped contract which expires on 30 September 2024.
1.5 The Applicant has entered into a short term contract for the supply of energy to the South Region due to the contracts imminent expiry. The intention is to look to negotiate a single set of agreements for utilities to take effect from October 2023 for a fixed term of three years. The new contracts will include the entire

supply for both South and North Regions, as procuring for a larger portfolio will offer the best in terms of value and price.”

6. The Applicant confirms it wrote to all residents by way of a letter in June/July 2022 advising of their intention to enter into the agreements, and of their intention to seek dispensation of the consultation process. A copy of that letter has been provided with the application.
7. Further detailed grounds for the application are set out in the witness statement of David Luscombe-Russell, also provided with the application. An electronic bundle has been supplied running to 54 pages. It contains a schedule of responses received by the Applicant. No objections to the application have been received by either the Tribunal or the Applicants solicitors.
8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

DETERMINATION

The Law

9. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to enter into a long terms qualifying agreement being a contract which will run for more than one year and may require any one leaseholder to pay more than £100 in any 12 month period will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
10. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
11. 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.

12. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or 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”.
13. 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).
14. 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.”
15. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the contract and so whether dispensation in respect of that should be granted.
16. 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.
17. If dispensation is granted, that may be on terms.
18. The effect of Daejan has 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.

Decision

19. I have read the bundle supplied. I am satisfied that all parties have had opportunity to raise any matters they wish the Tribunal to address and that this matter can be justly determined upon the papers supplied.
20. The Applicants rely principally upon the witness statement and exhibits of David Luscombe-Russell [13-24]. This explains that the Applicant is seeking to enter into new agreements for the supply of utilities. It is proposed to use a broker to ensure the Applicant complies with Public Procurement Regulations. His statement sets out the time pressures and I take judicial notice of the fact that energy costs are currently increasing.
21. I have taken note that no leaseholder has objected.
22. In my judgment it is just and equitable to grant dispensation to the Applicant for the qualifying long-term agreement for the supply of utilities as set out in the application.
23. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.