FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/21UG/LDC/2022/0058
Property	:	91 London Road, St Leonards On Sea, East Sussex, TN37 6AT
Applicant	:	Havelock Estates Ltd
Representative	:	Wildheart Residential Management Ltd
Respondent	:	Ms C Downing (Basement) Ms C Thomas & Ma Roniella Aspirin Tisoy (Ground Floor) Mr R Baker & Ms S Mullane (2nd Floor)
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 Determination	:	18 July 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 14 June 2022.

2. The Applicant explains that the property is an end of terrace converted building consisting of 3 self contained leasehold flats all sold on long leases from 1987.

3. The qualifying works include urgent roof repairs to adapt existing scaffolding to include tin hat wrap around Monoflex and front adaptation and chute. Hire of large skip, road license, removal of cement tiles under felt and tiles around roof to allow access to woodwork and removal, removal of joists fitting of new joists and associated woodwork. The cost of the additional works is £9,880.00 + VAT (£11,856.00).

4. The Applicant also goes on to explain that the additional works were uncovered when the contractors commenced works as per the original S20 Notice of works. Upon inspection it was discovered that the joists to the front dormer were sagging significantly.

5. The full Section 20 consultation was carried out in respect of the original planned roof works. No further consultation has taken place in respect of the additional roofing works uncovered.

6. The Applicant confirms that all leaseholders have been notified of the planned additional roofing works and have been given the opportunity to provide their comments.

7. And further, it does not consider it reasonable to stop the roof works, remove or extend the existing scaffold access whilst new Section 20 consultation commences as this will cause delays which in turn will result in ongoing scaffold hire costs of approximately £1,200 + VAT per calendar month.

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.**

9. Directions were issued on 30th June 2022. These required any objections to be sent to the Applicant and the Tribunal by 7th July

2022. The Tribunal has received no objections and so proceeds to determine the application on the documents filed.

DETERMINATION

The Law

10. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) 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.

11. 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".

12. 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.

13. 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".

14. 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).

15. 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."

16. 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 major works and so whether dispensation in respect of that should be granted.

17. 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.

18. If dispensation is granted, that may be on terms.

19. 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

20. No leaseholder has objected.

21. In my judgment it is just and equitable to grant dispensation to the Applicant for the works including urgent roof repairs to adapt existing scaffolding to include tin hat wrap around Monoflex and front adaptation and chute. Hire of large skip, road license, removal of cement tiles under felt and tiles around roof to allow access to woodwork and removal, removal of joists fitting of new joists and associated woodwork. I am satisfied that consultation should be dispensed with so that these works can be completed as part of the existing major works being undertaken.

22. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however direct that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.

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.