FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/LDC/2022/0035**
Property	**:**	**West End House, Westgate, Wetherby LS22 6AF**
Applicant	**:**	**West End House [Wetherby] Management Company Limited**
Representative	**:**	**Kimberly Hickey**
Respondent	**:**	**The Leaseholders (see Annex A)**
Type of Application	**:**	**Application for the dispensation of the consultation requirements provided for by section 20 of the landlord and tenant act 1985**
Tribunal Members	**:**	**Judge Watkin** **Tribunal Member Aaron Davis**
Date and Venue of Hearing	**:**	**Paper Determination 15 September 2022**
Date of Decision	**:**	**15 September 2022**

DECISION

Decision

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to remove all loose and defective external wall decorative coatings to the Property and reinstate with like for like product and decorate.

The Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

1. The Application is made by West End House [Wetherby] Management Company Limited (the "Applicant") for dispensation from consultation requirements imposed by section 20 of the Landlord and Tenant act 1985 ["the Act"].

2. The only issue to be considered by the Tribunal is whether it is reasonable to dispense with consultation requirements. The Application does not concern the issue of whether the service charge costs charged in relation to the works are reasonable or payable and it will be open to the lessees to challenge any such costs charged, insofar as they wish to do so, by way of separate Application.

3. The Tribunal decided on 22 July 2022 that this matter could be resolved by way of a determination on paper following the submission of written evidence. The parties were allowed 42 days from the date of that decision to inform the Tribunal if they wished to make representations at an oral hearing. Neither party indicated that they wished to make representations orally within the time stipulated.

4. Each party was also provided with an opportunity to send statements and documents to the Tribunal in advance of the hearing.

5. The Tribunal also determined that there would not be an inspection of the Property unless the Tribunal considers such an inspection to be necessary. The Tribunal does not consider an inspection of the Property necessary for the purposes of the present determination.

6. Pursuant to the directions of the Tribunal, the Applicant provided the Tribunal with a small bundle of papers by e-mail dated 29 July 2022.

7. No statement in response or any other documents have been provided to the Tribunal by the Respondents.

The Issue

8. Within the Statement of Case provided by the Applicant, it is stated that the reason for the Application was a lack of contractors able to quote for the works due to the location and nature of the works. No further details are provided by the Applicants in relation to why they consider either the location or the nature of the works to be sufficiently unusual to prevent

them from being able to identify appropriate contractors. It is noted that the Applicant has not provided details of the contractors approached for the work and that they only approached six contractors.

9. The Applicant indicated that they had received reports from two of five apartments reporting issues of damp and refers to “reports weekly of water ingress”. The Applicant indicates that the ingress became so bad that small temporary repairs were made to one of the apartments and that the leaseholders and the directors of the Applicant have continuously complained regarding the ongoing issues of damp and water ingress.

10. The following documents have been provided as evidence of the defects to the external coating and the reports received:

3 March 2022	e-mail from Sam Chapman complaining that the issue has been ongoing since November 2020 and expressing frustration as a result of the delays.
20 April 2022	e-mail from Paula Armstrong in relation to flat 4 62 Westgate. She attaches a letter from the manager of her apartment and states that ”the property is becoming uninhabitable” And expressing frustration in relation to delays

11. The following has been provided by way of evidence from the Applicant showing their initial compliance and intention to comply with the requirements of the Act:

11 November 2021	Notice of Intention to carry out works sent to all leaseholders by the Applicant's agent, inviting all leaseholders to make written observations in relation to the proposed works within the consultation period of 30 days and inviting the leaseholders to propose names of persons or firms of contractors from whom they should try to obtain an estimate in respect of the works.
22 February 2022	e-mail from the Applicant's agent informing the Applicant’s representative that they have been struggling to obtain quotations for the works but that they had been promised quotations from other contractors. Within this letter, the agents confirmed their intention to issue the stage two notice of estimates once the quotations had been obtained.

12. On 22 April 2022, a further letter was sent to all leaseholders informing them that due to them only having been able to obtain one quote for the works an Application to the Tribunal had been submitted for dispensation

from the requirement to consult.

13. The Applicant expresses concern that it would be beneficial for the works to be completed during the summer/warmer months and that allowing another autumn/ winter season would result in further leaks and damp as well as causing structural issues due to water penetration.

14. Details of the defects in the external coating to the Property are provided in an e-mail Dated 18 June 2021 from building surveyor, Daniel Bright. He reports as follows:

    a. the Property isn't rendered but is covered with a textured coating and then painted.

    b. there is cracking in places and the beads around the reveals are damaged and have rusted.

15. Mr Bright provides three recommendations as to how the issue could be remedied. Whilst it is not clear which approach the Applicant intends to take, the question of reasonableness of the Applicant's choice in that regard is not a matter which is currently before the Tribunal.

16. Within a letter to the Tribunal dated 29 July 2022, the Applicant confirmed that no Respondents had raised any objection to the project.

The Law

17. Section 20 (1) provides:

    (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) **[**the appropriate tribunal**]**.

18. The question for the Tribunal to decide is whether the consultation requirements should be dispensed with by the Tribunal.

19. S.20ZA of the Act reads as follows:

Consultation requirements: supplementary

    (1) Where an application is made to **[**the appropriate 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.

20. The Tribunal needs to decide whether it is reasonable to dispense with the requirements. This question was considered by the Supreme Court in the case of Daejan Investments Ltd v Benson [2013] UKSC 14 ("Daejan") . In summary the Supreme Court noted the following:

a. The only express stipulation within section 20ZA (1) in relation to an application to dispense with the consultation requirements is that the tribunal must be "satisfied that it is reasonable" to do so.

b. The purpose of the requirements is to ensure that the tenants are protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, the tribunal focus should be on the extent to which the tenants are prejudiced in respect of the failure to comply.

c. The "main, indeed normally, the sole question" for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements. (Paragraph 50).

d. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

e. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements and it would not be convenient or sensible for the Tribunal to distinguish between "a serious failing" and "a technical, minor or excusable oversight", (paragraph 47).

f. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms imposed are appropriate.

g. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the application under section 20ZA (1).

h. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants/leaseholders.

i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

j. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

Decision

21. The Tribunal notes that only a limited amount of information has been provided in relation to the efforts made by the Applicant to comply with the consultation requirements.

22. In particular, the Applicant has not provided the following:

    a. Details of the contractors approached for quotes

    b. The reasons for only approaching 6 contractors

    c. The reasons the Applicant considers the location of the Property makes it difficult for contractors to accept the work

    d. the reason why they consider the nature of work limits the availability of contractors.

23. As a result of the above, it is not clear to the Tribunal whether the Applicant took reasonable steps to obtain estimates. That is, a) whether the contractors approached were appropriate; and b) whether the Applicants made sufficient efforts to identify appropriate contractors. Based on its own general knowledge and experience (but no specific or secret knowledge), the Tribunal does not consider Wetherby to be a location that would ordinarily be difficult for contractors to attend nor that the work to the exterior of the Property is unusual.

24. In any event, the obligation to show that some relevant prejudice has been suffered is on the leaseholders and, in the absence of any submissions from the leaseholders in that regard, the Tribunal must find that no relevant prejudice exists.

25. Furthermore, the Tribunal should not refuse dispensation solely because the Applicant has breached or departed from the consultation requirements. In Daejan, the Supreme Court also indicates that it would not seem to be convenient or sensible to distinguish between “a serious failing” and “a technical, minor or excusable oversight”, (paragraph 47). Therefore, the Tribunal concludes that dispensation should not be refused simply because the Applicant has not taken all reasonable steps to comply with the consultation process.

26. Therefore, in the circumstances, the Tribunal considers it reasonable to dispense with the consultation requirements.

27. The Tribunal therefore grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the works to remove the loose wall coating from the exterior of the premises and to carry out patch repairs.

28. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Appeal

29. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin
15 September 2022

Annex A

List of Respondent Leaseholders

Mr M.R. Harris
Mrs P. M. Armstrong
Ms S. J. Colenutt
Ms C. Lyons
Mr S. Chapman