



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

**Case Reference** : CHI/43UF/LDC/2022/0108

**Property** : Flats 1-12 Laton Place, Carlton Road,  
Redhill RH1 2GB

**Applicant** : Raven Housing Trust Limited

**Representative** : Clarke Willmott LLP

**Respondents** : The Leaseholders

**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(s)** : Judge Tildesley OBE

**Date and Venue of  
Hearing** : Determination on Papers

**Date of Decision** : 26 January 2023

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DECISION

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## **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. The application was received on 6 December 2022.
2. The property is a purpose built block comprising of 12 individual residential flats.
3. The Applicant describes the works as remedial works required to the aerial and Sky Q cabling at the property following reports in December 2021 of a major issue with the transmission of signal to individual flats in the property, leaving the Respondents without any access to television or satellite. The Applicant states that the qualifying works have not yet commenced. The Applicant proposes to commission the works to commence once this application has been issued to the Tribunal.
4. Ms April Garguilo, the Homeownership Team Leader, supplied a witness statement dated 24 November 2020. Ms Garguilo stated the following:
  - a) In December 2021, the Applicant was advised by SPJ Systems of a major fault with the communal Sky system and issues with the satellite transmission to the individual Respondent's properties in the Building.
  - b) SPJ Systems informed the Applicant that the entire cabling system needed replacing which would involve re-siting the aerial, and scaffolding.
  - c) The Applicant commenced the consultation procedure in accordance with Section 20 Landlord and Tenant Act 1985 and issued the Respondents with a Notice of Intention dated 21 January 2022 in relation to the required works.
  - d) The Applicant obtained two quotations for the work, £2,846.70 and £2,300 which excluded VAT and the cost of the scaffolding. The Applicant then issued the Respondents with a Notice of Estimates dated 12 April 2022. The two contractors withdrew their tenders because of an increase to material costs. The Applicant could then only find one of its approved contractors willing to tender for the works. The tender was for the sum of £7,795 plus VAT which included the cost of the scaffolding.
  - e) The Applicant informed the Respondents that the original contractors had withdrawn their tenders, and provided the Respondents with the new quotation for their comments. The Applicant also advised that the costs of the works would be

paid from the sinking funds. Only one leaseholder (9 Laton Place) raised an observation in respect of the cost of works which was to deal with cost of the scaffolding. The Applicant secured a small reduction in the cost of scaffolding. to £1,600 plus VAT.

5. The Applicant sought dispensation on the grounds that despite best efforts it was unable to obtain at least two estimates for the works. Further the Applicant contended that if it was able to obtain a further quotation the notice periods in the Consultation Regulations would cause further delay to the works which have been outstanding since December 2021. The Applicant pointed out that the Respondents have been without television and satellite to their flats which was having an adverse effect on their enjoyment of the property.
6. The Applicant sought an unconditional Order that the consultation requirements set out in Section 20 Landlord and Tenant Act 1985 in respect of the remedial works required to the aerial and Sky Q cabling at the Building were fully dispensed with in accordance with Section ZAZA of the Landlord and Tenant Act 1985.
7. On 29 December 2022 the Tribunal directed the Applicant to serve the application and directions on the Respondents, which the Applicant did soon 5 January 2023.
8. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 16 January 2023 indicating whether they agreed or disagreed with the Application.
9. The Tribunal received two forms. One from Mr Simpson of Flat 6 who agreed with the Application and for it to be dealt with on the papers. The other one was from a Jan Mcinley on behalf of Ms Tilton of Flat 5 who agreed with the Application provided it did not a set precedent and that the repair works did not include repair to the SKYQ aerial. There was no request for a hearing from Ms Tilton.

## **Determination**

10. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

11. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works 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 1985 would have to be made.
12. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
13. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
14. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
15. The Tribunal now turns to the facts. The Tribunal is satisfied that it is necessary to carry out the works to repair the aerial and the SKY Q cabling and that there should be no further delay because the Respondents have not had a reliable television service since December 2021. The Tribunal finds that the Applicant made every effort to comply with the consultation requirements and did at one stage have competitive quotations from two contractors. Unfortunately the contractors were unable to honour their quotations because of a significant increase in the costs of the materials. As a result the Applicant was only able to secure a quotation from a single supplier which was considerably higher than the initial quotations. There was, however, no evidence to suggest that the new quotation was excessive

except the scaffolding costs for which the Applicant successfully negotiated a reduced amount.

16. The Tribunal observes that the Applicant has kept the Respondents informed of the developments in relation to the works and of the quotations from the various contractors. This may explain why only two leaseholders responded to the application, both of whom agreed with the application, albeit Ms Tilton's agreement was qualified. The Tribunal finds that no leaseholder has argued that s/he would suffer adversely from carrying out the works. The Tribunal notes that the Applicant is intending to pay for the works from the sinking fund.
17. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

### **Decision**

18. **The Tribunal grants an order dispensing with the consultation requirements in respect of the remedial works to the aerial and Sky Q cabling including the costs of the scaffolding.**
19. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

## **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](mailto:rpsouthern@justice.gov.uk) 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.