FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/23UB/LDC/2021/0054/AW
Property	**:**	Wyddrington House, 55 Pittville Lawn, Cheltenham GL52 2BQ
Applicant	**:**	Idris Davis Limited
Representative	**:**	HML Cheltenham
Respondent	**:**	Robert Willey (Flat 3)
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)	**:**	D Banfield FRICS Regional Surveyor
Date of Decision	**:**	31 August 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of fire proofing the doors, cupboards, loft hatch and loft space in accordance with the fire risk assessment carried out.

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

The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.

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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.

2. The Applicant states that Wyddrington House is a traditionally built, period four storey building providing eight privately owned apartments, configured as two residences per floor.

3. The Applicant explains that various fire-proofing works on the recommendation of a fire risk assessor and subsequent fire risk assessment were carried out on the building. These included fire proofing doors, cupboards, loft hatch and loft space. The Applicant's agent agreed with the landlord to obtain several quotes for the work so that the work could be planned in subject to funds being available. The Applicant chose to proceed with the cheapest proposal, however the contractor pulled out of the job at the last minute. Subsequently the Applicant contacted the contractor that submitted the second cheapest tender who agreed to proceed.

4. The Applicant further explained there were several issues included on the fire risk assessment and it was agreed to complete the works in phases until all recommended works had been completed. Before the work had been completed the Applicant was contacted by a leaseholder in the building that was trying to sell and it was highlighted through the Fire Risk Assessment that essential fire safety works must be completed for the sale to go through, this was also highlighted to insurers who put a huge excess on the block policy and a stringent timescale for which to complete the works. This essentially fast-tracked the work, or the property sale would have fallen through and also affected the block insurance policy. Consequently, the remaining works were completed as quickly as possible, essentially one after another. Although our client was the landlord, the Agent kept residents informed regards the ongoing work. The Applicant is seeking retrospective dispensation as after purchasing the freehold from the landlord, a resident has highlighted that the total cost of all the fire works carried out would breach the S20 threshold. The agents maintain that these works were agreed with the landlord and several comparative costs were obtained prior to commencing the works.

5. The Tribunal made Directions on 15 June 2021 indicating that it considered that the application was suitable to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.

6. The Directions required the Applicant to send them together with a copy of the application to each Respondent and to provide the Tribunal and the Respondent with details of the communications

with the leaseholders and of the costs of the works including the quotations obtained.

7. Included with the Directions was form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.

8. One Leaseholder, Mr Willey, has objected to the Application and therefore remains as a Respondent. The remaining Leaseholders have been removed as indicated above.

9. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.

10. On 2 August 2021 Mr Willey made a case management application to the Tribunal which initially appeared to be an application to strike out the application. After an exchange of correspondence he confirmed that he wished the application to proceed to a determination.

11. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.

12. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

13. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:
Where an application is made to a Leasehold Valuation 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.

14. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following

    i. The main 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.

ii. 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.

iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

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

v. 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 landlord's application under section 20ZA (1).

vi. 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.

vii. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

viii. 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.

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

Evidence

15. The Applicant has provided a paginated index bundle and it is upon the contents thereof that this determination is made. Reference to page numbers is shown as [x].

16. The work carried out as described in paragraph 2 above is referred to in further detail in the contractors' estimates and invoices at pages 34 to 39. Initially it appears that work to 9 Fire Riser doors and meter cupboard doors was required [34] as referred to in HML'

letter of 3 September 2020 [40] however subsequently work to the loft hatch were also identified [35]. This was explained together with the need to use an alternative contractor was referred to in HML's letter of 6 October 2020 [42]

17. In an email dated 8 July 2021 [44]objecting to the application Mr Willey, the lessee of Flat 3 sets out the history of the matter going back to February 2015 and concludes that "*Despite HML clearly identifying, on three separate occasions, that fire proofing work needed Sec.20 consultation they never implemented it. WE CONTEND THAT, HAD HML FOLLOWED DUE PROCESS REGARDING SEC. 20 PROCEDURE ON ANY OF THE PREVIOUS OCCASIONS, THEY WOULD NOT HAVE FACED THE DEADLINE IMPOSED BY THE INSURERS AND WOULD NOT NOW BE SEEKING TO DISPENSE WITH SEC. 20 WHICH HAS DISADVANTAGED ALL LEASEHOLDERS. THIS WAS NEVER AN EMERGENCY AND THIS NEED NOT HAVE OCCURRED IF HML HAD ACTED PROFESSIONALLY DURING THE PREVIOUS FIVE YEARS."* Mr Willey then further refers to the history of the matter and lists a number of issues that have arisen in respect of the quality of the work carried out.

18. In a reply [47] the Applicant points out that they follow the instructions of the freeholder but also communicate with the tenants some of which is informal and undocumented. Three quotations were obtained and, due to the timescale imposed on them by the insurers they ultimately had to accept the second cheapest quote.

Determination

19. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.

20. The question the Tribunal must ask itself is therefore whether the Respondent has been prejudiced by not being consulted prior to the recently completed works being carried out. In referring to the history of the Applicant's involvement the Respondent considers that the matter would not have become urgent if action had been taken earlier. This may well be the case but, it does not demonstrate the type of prejudice referred to in the Daejan case referred to above.

21. The Respondent also refers to shortcomings in the quality of the work carried out. Again, this is not relevant to whether dispensation should be granted being a matter more appropriately open to challenge under Section 27A of the Landlord and Tenant Act 1985.

22. In view of the above I am not satisfied that the failure to consult the lessees prior to works being carried out has resulted in prejudice being occasioned and as such I am prepared to grant the dispensation sought.

23. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of fire proofing the doors, cupboards, loft hatch and loft space in accordance with the fire risk assessment carried out.**

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

25. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
31 August 2021

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 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.