FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/23UB/LDC/2022/0073
Property	:	The Glass House, 80a St Georges Road, Cheltenham, GL50 3EE
Applicant	:	Southern Land Securities
Representative	:	Metro PM Limited
Respondents	:	Leonard Whitlock (Flat 4) Jemima Broadley (Flat 10)
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	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	1 September 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the roof carried out by P&S Decorators Ltd.

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.

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 1 August 2022.

2. The property is described as a purpose built 5-storey building of 10 flats with the following features: Flat roof, Small courtyard at the left hand side with steps leading to the rear car parking area, Main entrance door at the front and additionally a car park at the frontage.

3. The Applicant explains that "*An area of roof above 8 The Glass House was found to be defective and temporary repairs to it were not possible due to it being constructed from a liquid membrane and multiple small defects being present. High level coping stone repairs were carried out near the defective area in May 2022, however this issue, relating to the roof covering was not identified until recently.*" and further "*These works were of an urgent nature due to the amount of water that was entering property 8. Works commenced 13th July 2022 and were completed 15th July 2022. These works were carried out urgently to mitigate further damage to the apartment and fabric of the building.*"

4. The Applicant confirms that no consultation has been carried out due to the urgency of the works.

5. Copies of estimates have been provided with the application for P&S Decorators (Cheltenham) Limited and H2O Services Ltd.

6. The dispensation sought is for work undertaken by P&S at a cost of £3,936 inc VAT.

7. The Tribunal made Directions on 4 August 2022 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.

8. The Tribunal required the Applicant to send its Directions to the parties together with a 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. On 9 August 2022 the Applicant confirmed that the Tribunal's Directions had been served as required.

9. Six lessees responded five of whom initially agreed with the application although one subsequently sent an email raising

objections. The four lessees in agreement have been removed as Respondents as referred to above.

10. 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.

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.

The Law

12. 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.

13. 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;

a. 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.

b. 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.

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

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

e. 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).

f. 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.

g. 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.

h. 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.

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

Evidence

14. In accordance with the Tribunal’s directions the Applicant has provided a hearing bundle containing the evidence required for the Tribunal to determine the matter. Reference to page numbers in the bundle are contained in square brackets.

Applicant

15. In support of the background information contained in paragraphs 2 to 6 above copies of two estimates are provided, H20 [17] and P&S [18] together with a report from John Walton detailing the repairs required [19].

16. In a Statement of Case [79] the Applicant explains that there have been significant maintenance and repair issues at the premises relating to water ingress affecting the apartments. Following S.20 consultations they carried out works to the coping stones earlier in 2022 the works being completed in May, carried out by P&S Decorators and managed by John Walton.

17. Following completion of these works Flat 8 reported water ingress into another part of the flat which on inspection revealed pinholes in the body of the liquid roof system. John Walton surveyors inspected and advised on a remedy following which estimates were obtained from two contractors, the lower being from P&S Decorators which was accepted.

18. P&S were able to use the scaffolding already erected for the previous job giving an approximate saving of £1,500.

Respondents

19. Ms Broadley submitted a reply to the Tribunal objecting to the Application on the grounds of;

- Roof repairs have been going on for years at a huge cost
- The roof has been thoroughly surveyed and works undertaken
- How was this work missed?
- Shouldn't have been done as emergency works as should have been known from the earlier survey
- In a drought situation so water ingress could not have been urgent

20. Mr Whitlock, who initially replied to the Tribunal that he agreed with the Application subsequently objected and raised the following;
    - He has been in dispute with Metro over repair costs for a number of years.
    - None of the demands complied with Section 20 procedures.
    - Money for work carried out in July 2022 was demanded in November 2021.

Applicant's reply

21. In reply the Applicant says that;
    - The works are to a different part of the building as per section 3.5 of the surveyor's report.
    - Photos show the water ingress and a weather report indicate that there was rainfall in May [87, 89]
    - Two estimates were obtained ensuring value for money and to prevent further damage to the building.
    - The leading case of Daejan Investments Ltd v Benson [2013] is relevant (see further details at paragraph 13 above)
    - Long term reserves are insufficient to pay for section 20 major works
    - Lessees were invited to a meeting to discuss on 23 February 2022 prior to which a detailed letter was sent to all lessees but only the lessees of Flat 3 attended
    - The freeholders turned down a loan request, but Metro were able to negotiate a 6 month staged payment facility with the contractor
    - The money demanded in November 2021 was for the works to the coping stones, not the current works

Determination

22. 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.

23. The guidance of the Daejan case referred to above is that the lessees must demonstrate that they have suffered some "prejudice" by not

being consulted. It is not a pre-requisite that the works are urgent although this factor may have some relevance as to whether competitive tenders have been obtained. In this case two quotations were received and the rights that the lessees have "lost" are that of having greater notice of the expenditure, of nominating a contractor and commenting on the works proposed.

24. It is not helpful that the Applicant's reference to section 3.5 of the surveyor's report cannot be identified, there being no numbering to the paragraphs in the report dated 14 June 2022[22]. Neither is it possible to determine whether or not this is the same roof that was subject to the repairs described as the replacement of the coping stones and completed earlier this year. The earlier specification refers to Flats 8 & 10 and this current application refers to Flat 10.

25. The consultation documents do however refer solely to works to the coping stones whereas these works are to the roof membrane. This is not however a matter that the Tribunal need to determine in considering the question of dispensation.

26. Whether or not these works should have been identified earlier is not an issue in determining whether prejudice has been suffered the sole question being for the Tribunal being, once they were identified did the lessees suffer prejudice by not being consulted over how they were to be repaired.

27. In this case competitive tenders were obtained and by using the scaffolding still I place from the previous works the cost of striking and re-erecting the same was avoided.

28. In view of the above I am not satisfied that the Respondents have provided convincing evidence that they have suffered the type of prejudice as referred to in the Daejan case previously referred t.

29. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the roof carried out by P&S Decorators Ltd.

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

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

D Banfield FRICS
1 September 2022

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.