FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/43UK/LDC/2020/0072
Property	**:**	The Manor House, High Street, Limpsfield, Surrey, RH8 0DR
Applicant	**:**	Limpsfield Freehold Limited
Representative	**:**	Rupert Hill, as Director
Respondent	**:**	The 7 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 J. Dobson
Date of Directions	**:**	17th December 2020

DECISION

Decision

1. The Applicant is granted 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 in respect of major works being works to the roof. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.

The application and the history of the case

2. The Applicant applied, via its director, for 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.

3. The Tribunal gave Directions on 26th October 2020, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.

4. The Directions stated that having considered the application the Tribunal is satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11.

5. This is the decision made following that paper determination.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease 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.

7. 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".

8. 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.

9. 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".

10. 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).

11. 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."

12. 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.

13. 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.

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

15. The effect of *Daejan* has very recently been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), a decision published only several days ago, 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.

Consideration

16. The Applicant explained in the application that the Property comprises 7 flats contained in a converted manor house.

17. The Applicant also explained that the major works for which dispensation is sought are said to be essential repairs required to attend to the roof which is stated to leak in heavy rain causing damage to the

building and it is said that those works need to be carried out before the winter. Three separate areas of the roof are said to require repair.

18. The works are stated to be ones which would have been undertaken earlier in the year and completed by August but for the Covid-19 pandemic. It is further stated in the application that two quotes have been obtained and the contractor which gave the lower quote has been selected. However, no formal consultation process has been undertaken. The Applicant wishes to proceed with works pursuant to that quote without delay arising from formal consultation because of the urgency.

19. The major works to the property were stated to be scheduled for November 2020 at a cost of £1615 per flat. The Tribunal has not received any update to advise as to whether or not the works have now been undertaken, November having ended, although nothing in relation to this Decision turns on that.

20. A sample lease, was provided with the application ("the Lease"). The Tribunal understands that the leases of the other properties are in the same or substantively the same terms.

21. The Applicant, as freeholder, is responsible for repairs and other services. The relevant provisions are contained in subsections of clauses 2 and 3 and in the Sixth Schedule to the Lease.

22. There has been a response from 4 leaseholders agreeing to the application. There has been no response from the leaseholders of the 3 other flats, whether agreeing or, more relevant for these purposes, opposing. That said, one of those is the Applicant and another is family of the Applicant and so it seems unlikely that there could have been objection from that quarter

23. None of the leaseholders have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation, except for the potential delay and potential problems.

24. Accordingly, the Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

25. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the lift of the building.

26. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs 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 1968 would have to be made.

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 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.