FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00CT/LDC/2022/0011**
Property	**:**	**Customs House Apartments, Waterside, Dickens Heath, Solihull, B90 1UD**
Applicant	**:**	**Dickens Heath Management Company**
Representative	**:**	**Centrick Property**
Respondents	**:**	**The Residential leaseholders of the Customs House.**
Type of application	**:**	**An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works.**
Tribunal member	**:**	**V Ward BSc Hons FRICS – Regional Surveyor**
Date of Decision	**:**	**21 June 2022**

DECISION

Background

1) By an application received on 1 April 2022, the Applicant sought retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all/some of the consultation requirements imposed on the landlord by section 20 of the Landlord and Tenant Act 1985.

2) The justification for the application provided by the Applicant was as follows. The Applicant intends carrying out work to replace the communal fire alarm system within the building. The system has failed and the costs of installing the proposed new alarm system is £1,784.00 plus VAT ("the Works"). The Applicant contends that the Works are urgently required because the residents of the 6 apartments in the building will not be alerted in the event of a fire.

3) By Directions issued on 4 April 2022, the Applicant was instructed to (i) send to each leaseholder/ tenant and the freehold landlord, a copy of the application with any accompanying documents, these directions and the Tribunal's covering letter, and place a copy in the hall/ communal notice board at the Property and (ii), shall by 12 April 2022 confirm to the Tribunal that this has been done. The Applicant confirmed on 11 April 2022 that this direction had been complied with.

4) By the same Directions, any Respondent who wished to object to the application was instructed by 22 April 2022 to complete the reply form attached to the Directions, and return it to the Tribunal, with a copy to the Applicant indicating whether:

    - you consent to the application (1.e. agree to dispensation from full consultation)
    - or, you oppose the application (in whole or in part).
    - you wish to name a spokesperson;
    - you wish the Tribunal to hold a hearing.

5) The Directions include provision for the submission of additional documents and evidence should any Respondent object.

The Submissions of the Parties

The Applicant

6) The Applicant's statement explained that the Customs House had recently had a 6 monthly communal fire alarm service visit undertaken by Fire Compliance Services. The report, provided following the visit confirmed that

there were various faults with the system that could not be rectified. They therefore advised the system needed to be replaced urgently.

7) On 30 March 2022, the Applicant's agent issued Notice of Intention to the Respondent leaseholders regarding the works required to the alarm system. A copy of the quotation from Fire Compliance Services was also provided.

The Respondents

8) The Tribunal received confirmation from all leaseholders that they agreed to the dispensation and were happy for the Tribunal to determine the matter based on the written submissions.

Hearing and Inspection

9) As there have been no requests for an oral hearing and the Tribunal does not consider there is any necessity for the same, the Tribunal has determined this matter on the basis of the written submissions of the parties and without an inspection of the property.

The Lease

10) The application before the Tribunal relates only to the requested dispensation from the statutory consultation regime in the Act as interpreted by the courts (see below).

The Law

11) Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the consultation procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a leaseholder has to pay by way of a contribution to "qualifying works" (defined under section 20ZA (2) as 'works to a building or any other premises') unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual leaseholder in excess of £250.00.

12) Essentially, there are three stages in the consultation procedure, the pre-tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and, in some cases, a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.

13) In *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 ("*Daejan*"), the Supreme Court noted the following:

a) Prejudice to the tenants from the landlord's breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20ZA (1);

b) The financial consequences to the landlord of not granting 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 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 tenant. It is not appropriate to infer prejudice from a serious failure to consult;

e) 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;

f) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it;

g) Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). 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;

h) In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason;

i) The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect; and

j) 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).

14) For the sake of completeness, it may be added that the Tribunal's dispensatory power under section 20ZA of the Act only applies to the

aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

The Tribunal's Determination

15) It is clear to the Tribunal from the submissions made that the works were urgently required to maintain fire safety at the Property.

16) The Tribunal cannot identify any prejudice (as defined by *Daejan)* that the Respondents may suffer as a result of the failure to consult, nor have any Respondents made any submissions to that effect.

17) Accordingly, the Tribunal determines that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the Act. The requested dispensation is, therefore, granted.

18) Parties should note that this determination does not prevent any later challenge by any of the Respondent leaseholders under sections 19 and 27(A) of the Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.

Appeal

19) A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD