



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

Case reference : **BIR/00FY/LDC/2022/0001**

Property : **5 Lenton Road, The Park, Nottingham,
NG7 1DP**

Applicant : **Southern Land Securities Limited**

Representative : **Together Property Management**

Respondents : **(1) Paul Wynds
(2) Stephanie Drakes
(3) Mountview Estates PLC**

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 members : **V Ward BSc Hons FRICS – Regional
Surveyor
Judge David R. Salter**

Date of Decision : **31 March 2022**

DECISION

Background

- 1) By an application received on 1 February 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. A report was received from the owner of the Ground Floor Flat of a leak from the conservatory, causing internal damage to the property. Due to the urgency of the works, no section 20 (i.e. consultation) notices were issued. The Applicant seeks dispensation on the basis of any damage caused to the property by the leak and the health and safety issues that may have arisen if the works had not been carried out urgently.
- 3) By Directions dated 4 February 2022, the Applicant was instructed to send to the Tribunal and the Respondents, the following documents
 - a) An expanded statement explaining the purpose of the application and the reason why dispensation is sought.
 - b) Copies of any reports obtained in respect of the works together with all invoices received and any other appropriate material.
 - c) Relevant photographs if available.
- 4) By the same Directions, any Respondent who wished to object to the application was instructed by 11 March 2022 to submit a paginated indexed document to the Tribunal, with one copy to the Applicant, clearly stating the reason and justification for the objection. The Applicant had indicated that it was content with a paper determination. If any Respondent required an oral hearing, they were to notify the Tribunal upon making their statement.

The Submissions of the Parties

The Applicant

- 5) The Applicant's statement explained that the property is situated within a converted Victorian House constructed in the period 1860 to 1890 and which forms part of the Park Estate. This is a private residential estate located to the west of Nottingham City Centre that was built on the former Deer Park of Nottingham Castle.

6) Continuing, the Applicant stated that it was made aware by the leaseholder of the Ground Floor Flat, No 5, Mr Paul Wynds, that he was experiencing a leak from the conservatory and that following the leak there was dampness within the flat. The Applicant indicated that carrying out works to rectify the leak and related matters was its responsibility.

7) A contractor instructed to investigate the leak identified an issue with the leadwork which was corroded and letting water into the property. The Applicant provided a copy of the invoice tendered by the contractor – Woodward Building Management and Maintenance Ltd in the sum of £1,668.00 including VAT. This invoice gave a breakdown of the works as follows:

• Provision, erection & dismantle of scaffolding	£750.00
• Track and trace	£110.00
• Carry out repairs	£350.00
• Materials	£180.00
• Fault traced to existing lead fixing that had corroded, replaced with new to include new plywood section to ridge and applied 2 coats of Cromapol Acrylic roof coating to entire length of lead ridge as photos	
	£1390.00
	VAT £278.00
	Total £1,668.00

8) The works were completed on 23 February 2021.

9) The Applicant requested the Tribunal grant dispensation from the consultation procedures due to the fact that the works were urgently required, in particular, to prevent further damage to the property. The Applicant added that all leaseholders were notified of the works and the Applicant received no objections to the same.

The Respondents

10) The Tribunal received no objections, or correspondence of any kind, in relation to the application and, for completeness, would confirm there were no requests for an oral hearing.

Hearing and Inspection

11) 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

- 12) 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

- 13) 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.
- 14) 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.
- 15) 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).
- 16) 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

- 17) It is clear to the Tribunal from the submissions made that the works were urgently required to prevent water ingress into the property and to avoid further damage.
- 18) 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.
- 19) 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.

- 20) 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

- 21) 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