



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

Case Reference : CHI/23UB/LDC/2022/0077

Property : James Donovan Court, Hewlett Road,
Cheltenham, Gloucestershire, GL52 6UF

Applicant : Cheltenham Borough Council

Representative : One Legal

Respondent : The 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 : Judge D Whitney

Date of Directions : 24 October 2022

DETERMINATION

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 9 August 2022.

2. The Applicant explains that the property is a three-storey block of flats built in the 1980's and containing 27 flats all let on shared ownership leases.
3. The dispensation sought is in relation to a qualifying long-term agreement with Nationwide windows and the works required are for replacement PVCU windows and doors where required across all of its housing stock.
4. The Applicant goes on to explain that *“Notices of estimate are being issued prior to works being undertaken. Unfortunately an administrative error resulted in the residents of 1-27 James Donovan Court not being included in the consultation process. The error was due to a misunderstanding that shared owners needed to be consulted as well as leaseholders. In December 2021 a letter was sent to all leaseholders at James Donovan Court, explaining the situation and asking for their approval to make this application. No disapproval was received and the matter was also raised on 10/03/2022 at a general meeting by the residents of James Donovan Court.”*

And further “The contract is due to expire this year and the Landlord considers that the current estimated cost to Leaseholders is good value for money because the existing contract benefits from large economies of scale achieved by including thousands of properties and secondly from using a trusted contractor. A new contract for the works required would undoubtedly cost Leaseholders more in the current climate due to inflation, increased cost of materials and would lead to delays in installation because of the procurement processes, sourcing materials and possibly also due to a shortage of skilled operatives.

The windows within the block are in excess of 20 years old and require replacement. The Landlord believes the Leaseholders will not suffer any prejudice by any grant of dispensation because the works are necessary, are economical, can be undertaken this year and are not excessive/unnecessary.”

5. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**
6. Directions were issued on 12th August 2022. These required any objections to be sent to the Applicant and the Tribunal by 2nd September 2022 and if any objections are received a bundle should

be supplied by the Applicant. References in [] are to pages within the bundle supplied.

7. Mr Lockhart of Flat 8 and Mr and Mrs Koschalk of Flat 24 responded to the application but are content for the matter to be determined upon the papers. Their observations are within the bundle [20 and 22]. Neither objects to the application but invites the Tribunal to have regard to various matters.

DETERMINATION

The Law

8. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year 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.
9. 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”.
10. 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.
11. 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”.
12. 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).
13. 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.”

14. 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.
15. 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.
16. If dispensation is granted, that may be on terms.
17. The effect of *Daejan* has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), 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.

Decision

18. I have read the bundle supplied. I am satisfied that all parties have had opportunity to raise any matters they wish the Tribunal to address and that this matter can be justly determined upon the papers supplied.
19. The Applicants rely principally upon the witness statement and exhibits of Julian Denslow [23-348]. This explains how as a result of an administrative error the residents of this Property were not consulted when the Applicant entered into a long term agreement. The statement explains how Mr Denslow believes that the agreement will offer good value for money for the residents of the Property.
20. I have noted carefully the observations made by the two residents who respond. Neither objects but they raise that this is not the first administrative error that has occurred and also have reservations about the cost of the works. They acknowledge that the reasonableness of the costs and their liability to pay is not part of

this application. I would urge the Applicant council to work to allay residents concerns which do appear to be valid.

21. In my judgment it is just and equitable to grant dispensation to the Applicant for the qualifying long-term agreement for the installation of windows and doors. I am satisfied that the replacement of these items given they are said to be 20 years old may be reasonable and is something it is for the Applicant to determine as the person responsible for undertaking repair and maintenance. I take account of the fact that the agreement is due to expire and I am satisfied it is beneficial in all the circumstances to grant dispensation.
22. I do impose a condition that the Applicant will within 28 days of receipt of this decision send a copy of the same to all of the leaseholders so that they are aware of the same.
23. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.