



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

Case Reference : CHI/18UE/LDC/2017/0018

Property : 130 Boutport Street, Barnstable EX31 1TD

Applicant : Cottingham Investments limited

Representative : Pearce & Co

Respondent : Mr Paul and Mrs Lesley Scorer

Representative :

Type of Application : To dispense with the requirement to consult lessees about a long-term agreement

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 11 April 2017

Summary of decision

The Tribunal grants dispensation of all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985.

The Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from all or part of the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements.
3. The Applicant explains that urgent works are required to install a fire detection and alarm system in order to comply with an improvement notice under the Housing Act 2004.
4. The Tribunal made Directions on 17 March 2017 and sent a copy to the parties. The Directions provided a form for the Lessees to state whether they supported or opposed the proposals and if they wished the matter to be determined at an oral hearing. No response has been received.
5. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

6. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) 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.

7. 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
 - The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - 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.

- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- 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).
- 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.
- 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.
- 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.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

8. The Applicants' statement of case refers to an Improvement Notice being served on both themselves and the Respondents. Barum Friend Security Ltd has provided a quotation and during a meeting between Mrs Stephanie Edwards of the managing agents and Mr Scorer on 4 April 2017 verbal agreement was reached that the work could proceed.

Decision

9. 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 the requirements.
10. In this case the work is clearly urgent and no prejudice of the type referred to in the Daejan case referred to in paragraph 7 above has been identified.
11. I also take note that the Lessees have not objected to the application.

- 12. The Tribunal therefore grants dispensation of all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985.**
- 13. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
11 April 2017

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. 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.
2. 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.
3. 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.