



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

Case Reference : CHI/21UD/LDC/2017/0046

Property : 11 Magdalen Road, St Leonards on Sea,
East Sussex TN37 6EG

Applicant : Mr Barry Markham

Representative :

Respondent : Mr & Mrs Bailey (Top floor flat)

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 11 September 2017

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of the replacement of the guttering and fascia/soffit to the rear elevation.

This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from all of the consultation requirements imposed on the landlord by Section 20 of the 1985 Act with regard to the replacement of the fascia/soffit and guttering to the rear of the building.
2. Following the collapse of the rear guttering water is running down the rear elevation and entering the flats. It is said that the works cannot wait for the Section 20 Consultation period.
3. The Tribunal made Directions on 17 July 2017 which were copied to the parties together with a form for the Respondent to complete should they object to the application.
4. No objection has been received by the Tribunal and as indicated in Directions the Tribunal will determine the application of the papers already received.
5. The only issue for the Tribunal is whether or not it is reasonable to dispense with any 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 Applicant freeholder describes the property as a mid terrace block of 3 flats two of which are also in his ownership. The rear guttering has fallen from the building and water is entering the flats. Scaffolding is required to enable the replacement of the guttering and fascia/soffit.

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. Clearly the work needs to be done as soon as possible and no objections to the Application have been received by the Tribunal.
11. No prejudice to the leaseholders as referred to in paragraph 7 above has been identified.

- 12. In view of the above the Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of the replacement of the guttering and fascia/soffit to the rear elevation.**
- 13. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
11 September 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.