

10772



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

Case Reference : **CHI/21UC/LDC/2014/0061**

Property : **9 Cavendish Place, Eastbourne, East
Sussex BN21 3EJ**

Applicant : **Southern Land Securities**

Representative : **Hamilton King Management Ltd**

Respondent : **Mr A Ferrier (Flat 1)
Mr R Sharpe (Flat 2)
Mrs S McDermott (Flat 3)
Mr B Davies (Flat 4)
Mr J Yiego (Flat 5)**

Representative : **None**

Type of Application : **Section 20ZA Landlord and Tenant Act
1985
Application to dispense with
consultation procedure
Repair works to guttering and
downpipes**

Tribunal Members : **R T Athow FRICS MIRPM - Valuer Chair
P A Gammon MBE BA - Lay member**

Date of Hearing : **None**

Date of Decision : **9th March 2015**

DECISION

Decision

1. Dispensation is granted under Section 20ZA of the Landlord and Tenant Act 1985 because it is reasonable to dispense with the statutory consultation requirements for the two sets of works as sought in the application.

Background

2. This application relates to repair works required to the valley gutter at the junction of 5/7 and 9 Cavendish Place, together with additional work of the replacement of other gutters and downpipes of recommended by the contractor.
3. An application was made dated 17th December 2014 in which the Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (hereafter referred to as "The Act") from the consultation requirements imposed on the landlord by Section 20 of The Act.
4. The First-Tier Tribunal Property Chamber (Residential Property), hereafter referred to as "FTT", gave directions on 31st December 2014, in which it stated that the only matter for determination was whether or not under Section 20ZA of the Landlord and Tenant Act 1985 it is reasonable to dispense with the statutory consultation requirements.
5. The directions stated that, unless any of the parties wished otherwise, the matter would be decided only on the papers submitted and could be determined without a Hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
6. The Tribunal office sent copies of the application and directions, including a form, to the lessees and set a timetable for them to reply, giving them the opportunity to
 - a) support the application,
 - b) name a spokesperson or
 - c) request a Hearing.

Replies were received from the lessees of Flats 2 and 3 both supporting the application and not wishing the matter to be go to a Hearing.

7. The Applicants were also given a timetable to make full submissions, and to send a full copy to the lessees and this was done.
8. The Respondents were then given the opportunity to oppose or comment on any of the papers submitted by the Applicants but none were received by the FTT.
9. As the bundle submitted by the Applicant included annotated photographs of the parts of the building an inspection was not considered necessary.

The Case for the Applicant

10. From the Applicant's statement of case submitted by Hamilton King Management Limited (hereinafter referred to as HKML), the Applicant's managing agent, they had received a report of possible rising damp in the basement flat in December 2012. It proved difficult for the HKML to gain access into the flat for some considerable period of time, but after investigations had been undertaken the cause of the water penetration was found to be due to water coming into the flat from the adjoining property, number 7 Cavendish Place. In the application it was stated that Flat 1 was uninhabitable as a result of this.
11. Number 7 Cavendish Place was derelict and was due to be refurbished by the new owner, Silvergate Properties, but it had proved difficult to contact the company. Even Eastbourne District Council found it difficult to make contact with Silvergate Properties.
12. Eventually HKML managed to make contact with Mr Chaudry who represented Silvergate Properties, and after contractors had made site visits in August 2014 the full extent of the repairs required was established and estimates obtained.
13. It was found that a party lead valley gutter was the cause of the ingress and after considerable delays the owner agreed to share the cost of the works, but only once the work had been undertaken and the invoice raised.
14. Two estimates had been received by HKML for these works:

Clarke Roofing	£1,710
PMC	£2100
15. In Clarke's estimate they recommended that additional alterations were made to alleviate other problems on site by replacing a section of guttering and downpipe which was too small for the volume of water it carried. They gave an estimated cost of £1052.40.
16. Two other estimates were obtained for this work;

PMC	£1260
Jays Plumbing & Maintenance	£1260
17. HKML wrote to the lessees on 8th September 2014 informing them of the estimates and advising them that the work needed to be put in hand urgently so that Flat 1 could return to habitable use, but that they would be seeking retrospective consent under Section 20ZA of the Landlord and Tenant Act 1985 to forego the usual consultation process. Copies of estimates obtained were enclosed with the letter.

18. The contract for both jobs was subsequently awarded to Clarke.
19. The invoices for both jobs were raised on 12th December 2014 upon completion of the works.

The Case for the Respondents

20. The FTT has not received any communication from any of the lessees except the two replies supporting the works.

The Law

21. The statutory provisions primarily relevant to these applications are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act).
22. Section 20ZA (1) of the Act states:
 - a. '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.'
23. In Section 20ZA (4) the consultation requirements are defined as being:
 - i. 'Requirements prescribed by regulations made by the Secretary of State'. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').
24. In Section 20(2) of the Act 'qualifying works' in relation to a service charge, means works to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.
25. If the costs of any tenant's contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application are those set out in Part 2 of Schedule 4 of the Regulations.
26. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.

27. The matter has been considered in the leading case of **Daejan Investments Ltd v Benson & Ors [2011] EWCA Civ 38, 2011** in which three main issues were identified namely (i) whether the financial consequences to the landlord were relevant to a grant of dispensation under S20ZA; (ii) whether the nature of the landlord was relevant; and (iii) the correct approach to prejudice allegedly suffered by a tenant as a consequence of a landlord's failure to comply with the Consultation Regulations.
28. In the above case it was held that the financial effect of refusing dispensation on the landlord is an irrelevant consideration when exercising discretion under S20ZA (1) [59 of the Judgment]. Although there is no "closed list" of situations in which dispensation might be granted, the following situations might commend a grant of dispensation: (i) the need to undertake emergency works; (ii) the availability of only a single specialist contractor; and, (iii) a minor breach of the procedure under the Consultation Regulations which causes no prejudice to the tenants [63].
29. In the above case it was noted that the nature of the landlord can be a relevant factor, e.g. where the landlord is a company owned or controlled by the leaseholders [67].
30. It was further noted that in considering whether to grant dispensation, the FTT should consider whether the breach of the consultation regulations has caused significant prejudice to the leaseholders [72]. The landlord's failure to comply with the regulations, as ruled by the FTT, caused the respondents serious prejudice. The curtailment of the consultation exercise was a serious failing [73].

The Consideration

31. The FTT considered all of the evidence submitted.
32. The FTT considered the reasons for the delay between the disrepair being notified to HKML and the required remedial work being identified, the way the works had been estimated, with the varying extent of the required works as laid out in the various estimates, and the fact that there were two separate invoices for the total work. It considered whether the two jobs were linked or if they could be considered to be unrelated.
33. At 1.14 of the lease included in the bundle for Flat 1 it shows that this flat is liable to pay 35% for the services specified in Part 1 of the first Schedule (Service charges) and it assumed that there were no other flats paying a higher proportion of the service charge. Accordingly, if any sum is expended on the building in excess of £ 714.29 the full S20 consultation process would need to take place.

34. If the FTT decided they were to be unrelated the first job cost £1710 and Silvergate Properties had accepted liability for half of the cost of these works, leaving £855 to fall under the burden of the Applicant who would then be able to recover this from the five lessees. As Flat 1 is liable to pay 35% this equates to £299.25, thus taking it above the consultation threshold.
35. The second job cost £1052.40. 35% of this is £368.34 and so once again this is above the consultation threshold.
36. The purpose of this application is to seek dispensation for the need for this consultation process due to the urgent need for the works to be undertaken and the basement flat returned to a habitable state.
37. The FTT considered whether the breach of the consultation regulations has caused significant prejudice to the leaseholders.
38. Under the terms of the lease the landlord has an obligation to maintain the structure of the building.
39. The Tribunal considered the fact that the matter had been ongoing for almost two years and once the extent of the works was established it decided that it was in the best interest of the building for the works to be undertaken as quickly as possible.

The Findings and Reasons

40. In most cases it is normal for such works to be undertaken after the Consultation process has been carried through, but in this instance it made good sense to implement the repairs as soon as possible in order to re-establish the waterproof integrity of the building and bring Flat 1 back into a habitable condition.
41. When work of an urgent nature is needed to be undertaken, such as in this case, then providing the lessees have not been disadvantaged or suffered significant prejudice, work should go ahead as quickly as possible.
42. This situation is addressed in legislation by the inclusion of Section 20ZA of the Act and the landlord has sought to regularise the situation appropriately.
43. It does not cause significant prejudice to the Respondents as the work needs to be undertaken to protect the integrity of the property.
44. It should be noted, the Tribunal has not considered whether any costs incurred in relation to the works carried out are reasonable or not. They can be challenged by the Respondents if they are considered to be unreasonable.

45. It is important to distinguish between the reasonableness of dispensing with the notice requirements and the reasonableness of the works themselves.
46. The decision of the FTT cannot give or imply any judgement about the reasonableness of the quality and/or costs of the works themselves.

Signed

Richard Athow FRICS MIPRM Valuer Chair

Dated

10th March 2015

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, 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.
2. 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.
3. 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.
4. 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.