

12075



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

Case Reference : **CHI/00HN/LDC/2017/0005**

Property : **Queenswood, 24 Surrey Road, Bournemouth BH4
9BX**

Applicant : **AEL Properties (Southern) Ltd (Landlord)**

Represented by : **Napier Management Services Ltd**

Respondents : **The Lessees of Queenswood**

Date of Application : **25th January 2017**

Type of Application : **Application to dispense with consultation
requirements in respect of qualifying works -
Section 20ZA Landlord and Tenant Act 1985 (the
Act)**

Tribunal : **R. T. Brown FRICS**

**Date and of paper
consideration and
determination** : **1st March 2017**

Dated : **6th March 2017**

DECISION

DECISION

1. The Tribunal determines that it is reasonable to dispense with the statutory consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in relation to works proposed to carry out repairs to the bay window identified during the course of planned window replacement works.

REASONS

Background

2. On the 25th January 2017, the Tribunal received the Application under Section 20ZA of the Act for dispensation from all or any of the consultation requirements contained in Section 20 in relation to works required to the bay window identified during the course of planned window replacement works to Flat C, Queenswood, 24 Surrey Road, Bournemouth BH14 9HX.
3. Notice of the Application, together with information from the Tribunal, was given to the Leaseholders of the 4 Flats in the converted property.
4. A Directions Order was issued by the Procedural Chairman on the 2nd February 2017 including a direction that any Leaseholders who wished to make representations should do so by 16th February 2017. A form was included in the Directions for Leaseholders to return commenting on the application.
5. The Application requested the matter be considered on the papers submitted. The Procedural Chairman directed that any person requesting a full oral hearing should do so by 16th February 2017. No such request was received and accordingly the matter was considered on the papers submitted.
6. No application for an order under Section 20C preventing the Applicant from recovering its costs of these proceedings by way of the service charge provisions, in so far as the Lease permits such recovery, was made.

The Law

7. Section 20 of the Act limits the amount which tenants can be charged for qualifying works unless the consultation requirements have been either complied with, or dispensed with by First-tier Tribunal (Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003** ("the Consultation Regulations"). These require the Landlord to serve on the tenants a Notice of Intention, provide a facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and, the amount of the estimated expenditure, then have to be given in writing to each tenant and to any recognised tenant's association. There is also a duty to have regard to observations in relation to the proposal; to seek estimates from any contractor

nominated by or on behalf of tenants and the landlord must give its response to those observations.

8. Section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable to do so.

The Leases

9. The determination of this Tribunal relates to the statutory requirements under the Act. It does not extend to overriding any contractual obligations the parties may have under the respective leases. No specimen lease was provided in this case.

Applicant's Submissions

10. Mr D S Quinton, Major Works Co-ordinator of Napier Management Ltd made submission on behalf of the Applicant (Landlord).
11. Napier Management Services is the appointed managing agent by AEL Properties (Southern) Ltd.
12. During the course of works under Section 20 to replace windows to Flat C it became evident that the boxing to the bay window had failed and required replacement (as additional work to the planned work). The cost of this additional work exceeds Section 20 limits. There is currently scaffolding in place supporting the bay.
13. The Notice of Intention to undertake (additional) repairs was issued on 24th January 2017 and the Section 20ZA application made concurrently.
14. The surveyor from Greenwood Associates Chartered Surveyors and Designers initially looked at the work on 11th November 2016 and advised that he anticipated that there were issues with the bay window but further investigation would be required. It was agreed that the additional investigation would be undertaken after the other window replacement was due to take place. This work was to replace all the windows to Flat C. The windows were replaced during the second half of January 2017 and the additional investigation work was undertaken by Greenward Associates on 1st February 2017.
15. As a result of the additional investigation Napier were advised the whole bay would need work, both to the ground floor and Flat C on the first floor. Napier wrote to the Tribunal and the Leaseholders on 13th February 2017.
16. A Schedule of Works for the repair of the whole bay has been prepared which supersedes any other specifications, and renders previous quotes for the work (only to the bay of Flat C) invalid.

Respondent's Submissions

17. None of the Leaseholders made written or oral submissions in relation to the application.

The Tribunal's Deliberations

18. The Tribunal considered all the written evidence presented as summarised above.
19. The submission of Mr Quinton was sufficiently detailed to enable the Tribunal to conclude that an inspection of the bay window was not necessary nor would it assist in this case. In making its decision the Tribunal, therefore, had sight of all the relevant documentation.
20. The approach for the Tribunal to take when considering an application for dispensation was set out in the Supreme Court's judgement in *Daejan Investment Limited v Benson et al* [2013] UKSC 14. In summary the approach to be adopted is as follows:
 - (1) The Tribunal should identify the extent to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;
 - (2) That no distinction should be drawn between "a serious failing" and "technical error, minor or excusable oversight" save in relation to the prejudice it causes;
 - (3) That the financial consequence to the landlord of not granting a dispensation is not a relevant factor when the Tribunal is considering how to exercise its discretion under section 20ZA;
 - (4) The nature of the landlord is not a relevant factor.
21. Applying the tests set out above the Tribunal concluded that no prejudice to the Leaseholders has occurred. The issue with the bay window requires attention as a matter of urgency. It was simply not practicable or possible for the Applicant to carry out the full consultation exercise under Section 20. Works were already in progress and although anticipated the extent of these additional works could not be identified until the old bay windows were removed. The applicant had however applied for dispensation as soon as the extent of the problem had been identified. The Applicant had done the best it could by obtaining a report, schedule of works after which it issued Notice of Intention.
22. The total cost of the additional works have not been identified to the Tribunal however it is evident they will exceed the Section 20 limit of £250.00 per property (£1,000.00) and the Applicant was therefore correct in making this application because the work will have to be undertaken in any event in order to reinstate the property.
23. The Applicant had followed the proper process of obtaining a report and Schedule of Works. This is similar to the process (without the benefit of quotations) which would have had to be undertaken had the Applicant proceeded formally down the Section 20 route but without the statutory formalities from which the Applicant seeks dispensation. The Tribunal is, as a consequence, unable to identify any prejudice suffered by the tenants.
24. The Tribunal concluded that dispensation, under section 20ZA of the Act should be granted.

25. The reasonableness of the cost and standard of the work proposed is not in issue before this Tribunal. This Application only asks the Tribunal to dispense with the consultation requirements. It is not an application to consider the reasonableness of the works or the reasonableness or payability of the service charge which will arise from this expenditure. If there is any dispute about those matters, then it will have to form the basis of a separate application under section 27A of the Act.

Appeal Provisions

26. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
27. 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.
28. 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.

Robert T Brown
Chairman