

12109



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

**Case reference** : CHI/45UG/LDC/2016/0053

**Property** : Tower House Close, London Road,  
Cuckfield RH17 5EQ

**Applicant** : Retirement Lease Housing Association

**Applicant's  
Representative** : Brenda Pollard, Area Manager

**Respondents** : The Leaseholders

**Tribunal member** : Mr D Banfield FRICS

**Date of Directions** : 26 January 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. This is an application for dispensation from the consultation requirements provided by Section 20 Landlord and Tenant Act 1985. (the Act)
2. The Applicant explains that the sewerage system serving the site experienced breakdowns requiring urgent attention to maintain the service to the occupiers. Works have been carried out and costs in the region of £13,411.40 are expected to have been incurred.
3. The Applicant wrote to all lessees on 28 October 2016 explaining the situation and that it was applying to the Tribunal for dispensation
4. The Tribunal made Directions on 17 November 2016 requiring the Applicant to send copies to each Respondent. The Directions provided a form for Lessees to state whether they supported or opposed the proposals and if they wished the matter to be determined at an oral hearing.
5. The Tribunal has not received any forms either in support or opposition to the proposals and in the absence of a request for an oral hearing the matter is determined on the papers already received.
6. **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

7. 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.

8. 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**

9. At tab 5 of the bundle is a description of the sewerage system and details of the breakdowns and temporary repairs carried out pending the replacement of the 2 pumps.
10. At tab 6 is a copy of the final invoice from Xylem Water Solutions Limited in which reference is made to site visits on 18 July 2016 and that a blockage had been discovered.

## **Decision**

11. 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.
12. The invoice at tab 6 does not provide sufficient detail of the work carried out at a cost of £13,411.40. This application does not concern costs

however and the Tribunal are satisfied from the description at tab 5 that the work was necessary and could not be delayed for the consultation process.

13. No prejudice of the type referred to in the Daejan case referred to in paragraph 8 above has been identified.
14. I also take note that none of the Lessees have objected to the application.
- 15. The Tribunal therefore grants dispensation of all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985.**
- 16. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
26 January 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.