



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

Case Reference : CHI/00HY/LDC/2019/0083

Property : 1-12 Clarendon Court, Kingsbury Street,
Marlborough, Wilts SN8 1EJ

Applicant : Kingsbury Hill Management Company
Limited

Representative : Pinnacle Property Management Limited

Respondents : -

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 : 21 November 2019

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work to monitor the condition of the walls as identified in the Atkins Martin Architectural & Civil Structures report.

In granting dispensation, 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 (the 1985 Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that some brick walls at the property are leaning or bulging and therefore dangerous. A monitoring programme needs to be instituted for which dispensation from consultation is sought. Once the specification has been agreed for the remedial works leaseholders will be consulted via a Section 20 process.
3. Directions were made on 23 October 2019 indicating that the application would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. Attached to the directions was a form for the Respondent to indicate whether they agreed with or objected to the application. It was further indicated that if the application was agreed to or no response was received the lessee would be removed as a Respondent.
4. One form was received in support of the application. No objections were received. As indicated above the lessees are therefore removed as Respondents.
5. The only issue for the Tribunal is whether 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
 - a. 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.

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

Evidence

- 8. In the Applicant's bundle is a report Atkins Martin Architectural & Civil Structures part 1 of which is dated 25 July 2019 and part 2 dated 20 August 2019. The report details the defects found and recommends certain works together with a suggestion that the situation is monitored.

Determination

- 9. As referred to in paragraph 6 above Section 20 of the 1985 Act requires landlords to consult where they propose to carry out "qualifying works". Section 20(2) defines "qualifying works" as "works (whether on a building or any other premises)"
- 10. The subject of this application is professional fees for a monitoring report which, on its own cannot be classified as "works to a building" and as such Section 20 consultation is not required. It may however be argued that where such a report is used to prepare a specification to enable works to be carried out the costs then part of the overall repair project and as such consultation may be required.

11. It is clear that a potential problem with boundary walls has been identified and it is sensible to monitor the situation before preparing a specification of works.
12. 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.
13. No lessee has objected to the application and no prejudice as referred to in the Daejan case above has been identified.
14. Whilst I do not consider on the facts as presented that Section 20 Consultation is required for the avoidance of doubt and to provide comfort to the Applicant management company I am prepared to grant the dispensation requested.
- 15. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work to monitor the condition of the walls as identified in the Atkins Martin Architectural & Civil Structures report.**
- 16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
21 November 2019

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 appeal is seeking.