



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

Case Reference : CHI/ 21UC/LDC/2019/0073

Property : Carew Views, 30 Carew Road, Eastbourne,
East Sussex BN20 2JL

Applicant : Carew Views Management Limited

Representative : Housemartins Property Management

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 : 24 October 2019

DECISION

In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the works of repair to the roof and pointing to the penthouse as referred to in the application.

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 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that urgent repairs were required to the roof of the property to prevent water ingress.
3. The Tribunal made Directions on 17 September 2019 requiring the Applicant to serve a copy of the application and the Directions on each of the lessees. Included with the Directions was a form for the lessees to complete indicating whether they agreed with or objected to the application. The Directions also noted that lessees who agreed with the application or did not return the form would be removed as Respondents.
4. Thirteen lessees responded agreeing to the application and as indicated all lessees have therefore been removed as respondents.
5. There were no requests for an oral hearing and the application is therefore determined on the papers in accordance with Rule 31 of the Tribunal's procedural rules.
6. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application 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
 - 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

9. The Applicant did not provide the paginated bundle specified in the Tribunal's Directions sending instead an unpaginated and unexplained miscellany of emails and photographs in no perceptible order.
10. From the application form however it appears that following a leak above Flat 24 it was discovered that the roofing underfelt had deteriorated and required attention for which scaffolding was required. Once the scaffolding had been erected it was discovered that the pointing around the lintels to the penthouse flat also required repair.
11. Amongst the papers provided are photographs of brickwork with evident cracks to the pointing and it is presumed that these are the works referred to above. Further photographs show scaffolding to the flank wall of a 3-storey building and a section of underfelt.

Determination

12. In making my determination I take into account that 13 lessees support the application and none are in opposition. I also accept that where repairs are required to prevent further damage to a property it may not be prudent to await the outcome of the consultation process. I also accept that no prejudice of the type referred to in the Daejan case referred to

above has been identified. In these circumstances I am prepared to grant the dispensation from consultation requested.

- 13. In accordance with the above, the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the works of repair to the roof and pointing to the penthouse as referred to in the application.**
- 14. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
24 October 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.