



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

**Case Reference** : CHI/ 21UG/LDC/2019/0056

**Property** : 2 Mulberry Court, Devonshire Road,  
Bexhill on Sea, East Sussex TN40 1HG

**Applicant** : MK Charitable Trust

**Representative** : Godfrey John & Partners

**Respondent** : 1) Mr S Fletcher (Flat 2)  
2) Mr P Roy (Flat 8)

**Representative** :

**Type of Application** : To dispense with the requirement to  
consult lessees about major works

**Tribunal Member** : Mr D Banfield FRICS

**Date of Decision** : 5 September 2019

Page numbers are indicated as [x]

## **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 major works were undertaken including replacing a steel walkway and installation of an interlinked fire Alarm System. The works were undertaken between February and April 2018.
3. The Tribunal made Directions on 16 July 2019 requiring the Applicant to send them together with a form for the lessees to complete indicating whether they agreed with, or objected to, the applications. The Directions also noted that lessees who agreed with the application or did not return the form would be removed as Respondents.
4. Objections were received from the lessees of Flats 2 and 8. The remaining lessees did not reply and have therefore been removed as Respondents. There were no requests for an oral hearing and the application is therefore determined on the papers in accordance with Rule 31.
5. 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**

6. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

- a. (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
    - b. 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.
    - c. 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.

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

## **Submissions**

### **Applicant**

8. In Mr John's statement [91A] he refers to taking over the management of the block in June 2014 at which time he concluded urgent repairs were required. Two meetings were arranged with leaseholders to keep them informed and they have liaised regularly with the Local Authority.
9. Regrettably the contact address for the lessee of Flat 2 was not updated but he considers it surprising that the tenant in occupation had not made his landlord aware of developments.
10. Some of the points made by the Respondents are not relevant to a S.20ZA application but may be raised in a separate case.
11. The correct S.20 consultations were carried out, the most competitive estimate chosen, and the Respondents have not suffered prejudice whether or not they received the Notices.
12. The cost of alternative accommodation is not relevant as all owners had to vacate and correspondence was sent to all other owners.

### **Mr Roy**

13. In his statement [64] Mr Roy says;
  - Godfrey John have managed Mulberry Court for 5 years

- Major works undertaken over last 18 months.
- Their approach lacked professional project management and was inconsiderate to lessees
- Unforgiving regarding finding alternative accommodation
- Cost overruns not notified to lessees e.g. electrical works
- Site poorly managed with several areas damaged
- Assurance that repairs would be made good not occurred
- No written statement of omissions/overruns
- Lift removed without consultation

## **Mr Fletcher**

14. In his statement [67] Mr Fletcher says;
- Dispensation could set precedent
  - Confusion over role of coach house
  - Aware of lessees concerns back to 2009-12
  - Aware of required works in 2009. Lack of maintenance may have caused need for replacement.
  - 9-year delay inappropriate for fundamental structural component
  - Advised change of address in April 2014
  - No correspondence received until his tenant sent copy of a letter received 1 December 2017 requiring eviction – insufficient notice given
  - Breaches terms of lease – Peaceably and quietly to hold and enjoy
  - Copy correspondence not received until 30 August 2018
  - Tenant rehoused at cost of £2,883.66
  - Incurred legal costs of £2,715 which he wishes to claim
  - Godfrey John continued to use wrong address
  - Service charge requirements of lease not complied with
  - Poor condition of building restricts his ability to remortgage

## **Determination**

15. This is an application for dispensation from the consultation requirements only and in determining whether the application should be granted I must be guided by the Daejan case referred to at paragraph 7 above.
16. Both Respondents make a number of points in objecting to the application and Mr John acknowledges that, due to a staff error, he has not been using Mr Fletcher's correct address since 2014.
17. The majority of these points however relate to the manner in which the works has been carried out and whether unreasonable costs have been occurred. I make no comment as to whether the points have merit, but I must determine that these are matters that should be the subject of an application under S.27A of the Landlord and Tenant Act 1985 where the costs incurred and standard of work can be fully examined.

18. There is no suggestion by the Respondents that the cost of the works is not recoverable under the terms of their leases.
19. The issue for this application is simply whether the landlords would have done anything different if they had received the benefit of any observations made by the Respondents as part of the consultation process.
20. Copies of two consultation procedures have been included in the bundle and I am satisfied that they were both satisfactorily carried out with competitive tenders being sought. There is therefore no need for the tribunal to consider whether or not to grant dispensation except in respect of Godfrey John's failure to serve the notices on Mr Fletcher.
21. I must now consider whether the lack of notice of the consultation alone has financially disadvantaged Mr Fletcher. There is no suggestion that he would have argued that the work was not required and whilst he lost the opportunity to nominate a contractor there is no suggestion that the estimates competitively obtained were excessive. In determining the merits of the application, I can only consider what was known at the time the consultation was taking place rather than with the benefits that hindsight may bring.
22. Given that the challenges made are in respect of the cost and quality rather than any prejudice incurred by any failure in the consultation process I determine that dispensation may be granted.
- 23. The Tribunal therefore grants dispensation from any failures in the consultation process carried out in respect of replacing the steel walkway, provision of interlinked fire alarm and flat roof recovering all the subject of Statements of Estimates dated 6 September 2016 and 23 January 2017.**
- 24. The parties are reminded that under the current application the Tribunal has only considered whether or not any requirements of the consultation process may be dispensed with if not properly undertaken. The tribunal has not determined as to whether the costs claimed are payable or reasonable.**

D Banfield FRICS  
5 September 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.