FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/ 23UG/LDC/2019/0082
Property	**:**	Sweetbriar House, Chapel Hay lane, Churchdown, Gloucester GL3 2HS
Applicant	**:**	Stonewater (2) Limited
Representative	**:**	Shakespeare Martineau
Respondent	**:**	The lessee of Flat 16
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member	**:**	Mr D Banfield FRICS
Date of Decision	**:**	9 January 2020

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works referred to in the Fire Safety Report dated 23 June 2017 subject to the condition that the amount charged to the service charge account is limited to £8,800.63 plus VAT.

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 fire safety works were carried out in 2017 without first complying with the consultation requirements.

3. The Tribunal made Directions 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 Respondents 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 objection to the application has been received and, in accordance with the above paragraph the remaining lessees have been 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.**

6. References to page numbers in the bundle are shown as [*]

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. At appendix 2 [12-27] is a Fire Risk assessment dated 23 June 2017 which includes a list of requirements [19&20] Of these requirements two are listed as "urgent", one as "immediate" ten as "routine" and two without a time scale mentioned.

10. In summary the works required comprised; the provision of drop down smoke seals to 9 doors (urgent), smoke seals to other doors, the provision of a detector to the power supply room, the installation of two fire doors, installation of signage, replacement of a warped door, extending fire breaks above existing door frames, and the renewal of glazing. Regular fire drills (immediate) and the recording of visitors (urgent) was also required.

11. The "Risk Matrix" [22] refers to a high likelihood of fire with a moderate severity of harm/consequences. With one exception all of the works are marked as completed on 3 November 2017.

12. An invoice from A1 Maintenance dated 15 December 2017 in the sum of £11,079 plus VAT [28] gives minimal and potentially inaccurate information as to the work carried out.

13. Stonewater wrote to the lessees on 24 June 2017 [29] mentioning the Grenfell case, advising that works were required and that A1 had been instructed. In their application it was said that "the works were required

to be carried out promptly" and that "it was not appropriate to wait until a consultation period was carried out"

14. In objecting to the application [49 -50] Mr Shorting on behalf of the lessee of Flat 16 stated that;

    - Reference to Grenfell was scaremongering as the two properties were dissimilar.
    - Works did not commence until late October and there was sufficient time for consultation under Section 20
    - A1's invoice gives little information on the works carried out
    - He has received an alternative quotation of £8,800.63 plus VAT [53] and considers that even lower quotes could be obtained.
    - There was only one item listed as urgent
    - Many of the items had existed since 1988 and it took 4 months to commence works on site.
    - There may be a qualifying long-term agreement with the contractor.

15. In response the Applicant states that [43-44];

    - They acted as a responsible landlord in taking the safety of residents seriously.
    - The report was received on 23 June 2017 and all works completed by 2 November 2017. Non- urgent works took longer to complete
    - The indicated completion dates on the fire safety report refer to the date of the invoice.
    - It is accepted that A1's invoice contains little detail but contains reference to the works order which does provide a fuller specification.
    - The work was completed in four months not commenced in four months as suggested by the Respondent.
    - The quotation obtained by Mr Shorting is based on insufficient information,
    - The application does not relate to a qualifying long-term agreement.

Determination

16. 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.

17. Although I agree that this property bears little resemblance to Grenfell Tower I do accept that once fire safety works had been identified as being required a responsible landlord should give them appropriate attention. I also accept however that the extent of the works referred to as "Urgent" was restricted to providing door seals to some 9 doors.

18. Whilst misleading information is contained in A1's invoice there does not appear to be a dispute that the works have been carried out, only that consultation should have taken place.

19. Whilst Mr Shorting refers to the difficulty in in obtaining a comparable quotation he does exhibit one from Mark Holland Group Limited for £8,800.63 plus VAT. The Applicant refers to this being based on insufficient information. The written quotation does however refer to completing the tasks within the Fire Risk Assessment document and I am not therefore satisfied that this is a valid objection. Whilst Mr Shorting considers that lower quotes I prefer to accept the evidence of the written quotation provided.

20. In view of the alternative quotation obtained I am satisfied that the respondent has sufficiently demonstrated the type of prejudice referred to in the Daejan case referred to in paragraph 8 above.

21. Whilst I am satisfied that it was reasonable for the Applicant to have the urgent work carried out without going through the required consultation process I do not consider this also applies to the majority of the report's requirements which are marked as "routine". I consider that a prudent landlord would have had the urgent work carried out immediately and then obtained competitive quotations for the remainder.

22. The landlord however decided to award a contract covering both urgent and non-urgent works and I do not consider it reasonable that the Respondent should suffer the financial consequences of this decision.

23. Whilst I am prepared to grant the dispensation requested I consider it reasonable to restrict the amount that may be recharged to the lessees by way of their service charges to the alternative quotation obtained by the Respondent.

24. 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 works referred to in the Fire Safety Report dated 23 June 2017 subject to the condition that the amount charged to the service charge account is limited to £8,800.63 plus VAT.

25. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

D Banfield FRICS
9 January 2020

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.