



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

Case Reference	: CHI/21UC/LDC/2020/0107
Property	: The Limes, Upperton Road, Eastbourne, East Sussex BN21 1JT
Applicant	: The Limes (Upperton) Limited and The Limes (Eastbourne) Limited
Representative	: Sussex Legal Consultants
Respondent	:
Representative	:
Type of Application	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	: D Banfield FRICS Regional Surveyor
Date of Decision	: 24 February 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the omitted Stage 2 Notice and the emergency works to make the balconies safe.

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

The Applicant is to send a copy of this determination to the Lessees.

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 Act.
2. The Applicant explains that Phase 1 of external decoration and repairs works was completed in March 2020, following a full section 20 consultation. The consultation for Phase 2 mistakenly omitted service of the Stage 2 Notice, an omission not realised until November 2020. The Phase 2 works commenced in August 2020. In the course of carrying out those works it was discovered that the balconies at the front of the building were structurally unsafe. Emergency works to make the balconies safe were undertaken, without consultation, pending a further specification for the full work required to these balconies.
3. The Applicant seeks dispensation for the deficiencies in the original consultation for Phase 2, and for the emergency works to the balconies.
4. The Tribunal made Directions on 12 January 2021 indicating that the Tribunal considered that the application was suitable to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
5. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
6. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
7. Seventeen lessees responded all of whom indicated that they agreed with the application and have therefore been removed as Respondents in accordance with paragraph 6 above.
8. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
9. 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

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

S.20 ZA Consultation requirements:

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.

11. 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
 - i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. 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).
 - vi. 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.
 - vii. 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.
 - viii. 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.
 - ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

12. The reason for this application is set out in paragraph 2 above. In the absence of an objection from any of the lessees the Applicant has not been required to provide further submissions.

Determination

13. 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 those requirements.
14. No objections have been received and therefore no evidence of prejudice has been submitted.
15. The Tribunal accepts that the explanation for the omissions in the Phase 2 consultation and that it was reasonable to carry out emergency works to the balconies. In the absence of any objection I am prepared to grant the requested dispensation.
16. 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 omitted Stage 2 Notice and the emergency works to make the balconies safe.**
17. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
18. **The Applicant is to send a copy of this determination to the Lessees.**

D Banfield FRICS
24 February 2021

RIGHTS OF APPEAL

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 be sent by email to rpsouthern@justice.gov.uk

2. 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.
3. 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.
4. 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.