



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

Case Reference : CHI/45UH/LDC/2021/0101

Property : 49 Mardale Road, Worthing, West Sussex,
BN13 2AY

Applicant : Worthing Homes

Representative :

Respondent : Mr Jason Harwood

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 : 14 December 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to install a new MDPE water main.

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 Applicants explains that the Property is a one- bedroom flat in a purpose- built block of two flats. The works have been completed and so the dispensation sought would be retrospective.
3. The application states that in May 2021 a water leak was identified at the block requiring emergency and urgent remedial action, being the installation of a new MDPE water main. It is said that due to the amount of water leaking, it was not practical to enter into a section 20 consultation and allow over 60 days before starting the work. The contractor, Coastal Drains, sent out to assess the work required, revealed work the cost of which would be over the section 20 consultation 'qualifying works' threshold. However, the Applicant contends that due to the water leaking, there was no option but to instruct the contractor, who were instructed on 07 May 2021, as an urgent priority, with works being completed on 10 May 2021.
4. The cost of the work came was £2,151.36, including VAT and the Applicant's 20% management fee, described as relating to managing the work and administration costs, which divided by the two flats in the building, equates to a cost of £1,075.68 per property. The Applicant wishes to charge the cost of the works in the September 2022 service charge demand.
5. The Tribunal made Directions on 12 November 2021 indicating that it 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.
6. The Tribunal sent its Directions to the Respondent together with a copy of the Application and a form to indicate whether he agreed with or objected to the application and if he objected to send his reasons to the Applicant and Tribunal.
7. No objection was received and no request for the matter to be determined at an oral hearing has been made.
8. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were given that the application remained unchallenged.
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.

Decision

- 12. No objection has been received and the Applicant has not therefore been required to submit a hearing bundle. The determination is made on the information received in the application and as referred to in paragraphs 3 and 4 above.
- 13. In the absence of an objection from the Respondent no prejudice as referred to in the Daejan case referred to above has been demonstrated.
- 14. The Tribunal therefore **grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to install a new MDPE water main.**
- 15. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
- 16. **The Tribunal will send a copy of this determination to the Respondent.**

D Banfield FRICS
14 December 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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.