



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

Case Reference	:	CHI/00HN/LDC/2021/0105
Property	:	58 West Overcliff Drive, Bournemouth, BH4 8AB
Applicant	:	58 West Overcliff Drive Residents Association Limited
Representative	:	Town and City Management Limit
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(s)	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	25 January 2022 without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11

DECISION

The Tribunal grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to replace the walkway.

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 decision 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 1985 Act.
2. The Applicant explains that the Property is a former house which has been converted into five flats. The anticipated cost of the intended work is £7,850, some way above the limit for works without consultation, namely £1250.
3. The application is said to be urgent because the current condition of the walkway area which the Applicant intends to replace is a major health and safety concern for residents and visitors. The walkway is described as consisting of rotting wooden slats. It is further said that the Applicant wishes to commence the work as soon as funds permit, rather than have to wait for the completion of the consultation period.
4. The Tribunal made Directions on 16 November 2021 indicating that the Tribunal is satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
5. Sent to the Lessees were the Tribunal's Directions, a copy of the Application and a form for the Lessees to complete indicating whether they agreed with or objected to the application. It was indicated that those Lessees who agreed with the application or failed to respond would be removed as Respondents.
6. Four responses were received all in favour of the application and the lessees are therefore removed as respondents as indicated above.
7. 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 no objections had been received.
8. 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

9. 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.

10. 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

11. There being no objections no further information was required of the Applicant above that already submitted with the application.

Decision

12. 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. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.
13. Clearly these works are urgent and should not be unduly delayed by the time taken to follow the consultation procedures laid down.
14. No lessee has objected to the application and no prejudice of the type referred to in the Daejan case has been identified.
15. In view of the above **the Tribunal grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to replace the walkway.**
16. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
17. **The Applicant is to send a copy of this decision to the lessees**

D Banfield FRICS
25 January 2022

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.