



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

Case Reference : CHI/29UM/LDC/2015/0025

Property : 70-74 High Street, Sittingbourne, Kent
ME10 4PB

Applicant : Southern Land Securities Limited

Representative : Hamilton King Management Limited

Respondents : Mr Robert Houghman
Mr Neil K Bolton
Mrs Caroline Lindsay
Merchant Investors Assurance

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works- section
20 ZA Landlord and Tenant Act 1985

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 29 July 2015

DECISION

Summary of decision

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from some of the consultation requirements imposed on the landlord by Section 20 of the 1985 Act (“the Act”).
2. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**
3. Directions were made on 3 June 2015 requesting the lessees to complete a form advising whether they supported or opposed the application and whether they required an oral hearing.
4. No forms have been returned to the Tribunal either objecting to the application or requesting an oral hearing and the matter has therefore been determined on the basis of the bundle received in accordance with rule 31 of the Tribunal Procedure Rules 2013.

The Law

5. 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.
6. 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
 - 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.
 - The financial consequences to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

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

Evidence

7. Hamilton King say that following a history of water ingress into the ground floor shop they commissioned Angell Thompson consulting structural engineers and surveyors to inspect and provide a report.
8. Two quotations for the works were obtained from contractors and it then became apparent that the level of cost would require consultation under S.20 of the Landlord and Tenant Act 1985.
9. An application to this Tribunal was made on 7 May 2015 and on the following day a Notice of Intention was sent to the lessees.
10. In view of the ongoing water penetration the lower priced contractor was instructed to start work and this has now been completed.

Decision

11. It is clear that the water ingress into the ground floor required urgent attention. Two quotations were received and the lower accepted.
12. None of the lessees has objected to the application or indicated whether they have suffered prejudice by the lack of consultation required by S.20 of the Landlord and Tenant Act 1985.
- 13. On the basis of the evidence before it the Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**
14. Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS
29 July 2015

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 application is seeking