

12052



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

Case Reference : **CHI/00HN/LDC/2017/0004**

Property : **Alum Chine Gate House, 17 Alumdale Road,
Bournemouth, BH4 8HX**

Applicant : **Tyrrel Investments Inc (Landlord)**

Represented by : **Napier Management Services Ltd**

Respondents : **The Lessees of Alum Chine House**

Date of Application : **20th January 2017**

Type of Application : **Application to dispense with consultation
requirements in respect of qualifying works -
Section 20ZA Landlord and Tenant Act 1985 (the
Act)**

Tribunal : **R. T. Brown FRICS**

**Date and of paper
consideration and
determination** : **1st March 2017**

Dated : **6th March 2017**

DECISION

DECISION

1. The Tribunal determines that it is reasonable to dispense with the statutory consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in relation to works proposed to prevent further damage to the subject property as a result of water ingress.

REASONS

Background

2. On the 20th January 2017, the Tribunal received the Application under Section 20ZA of the Act for dispensation from all or any of the consultation requirements contained in Section 20 in relation to works required to prevent further ingress of water into Flat 1, The Gate House, Alum Chine House, 17 Alumdale Road, Alum Chine, Bournemouth BH14 8HX .
3. Notice of the Application, together with information from the Tribunal, was given to the Leaseholders of the 8 Flats in the converted property.
4. A Directions Order was issued by the Procedural Chairman on the 2nd February 2017 including a direction that any Leaseholders who wished to make representations should do so by 26th February 2017. A form was included in the Directions for Leaseholders to return commenting on the application.
5. The Application requested the matter be considered on the papers submitted. The Procedural Chairman directed that any person requesting a full oral hearing should do so by 16th February 2017. No such request was received and accordingly the matter was considered on the papers submitted.
6. No application for an order under Section 20C preventing the Applicant from recovering its costs of these proceedings by way of the service charge provisions, in so far as the Lease permits such recovery, was made.

The Law

7. Section 20 of the Act limits the amount which tenants can be charged for qualifying works unless the consultation requirements have been either complied with, or dispensed with by First-tier Tribunal (Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003** ("the Consultation Regulations"). These require the Landlord to serve on the tenants a Notice of Intention, provide a facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and, the amount of the estimated expenditure, then have to be given in writing to each tenant and to any recognised tenant's association. There is also a duty to have regard to observations in relation to the proposal; to seek estimates from any contractor

nominated by or on behalf of tenants and the landlord must give its response to those observations.

8. Section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable to do so.

The Leases

9. The determination of this Tribunal relates to the statutory requirements under the Act. It does not extend to overriding any contractual obligations the parties may have under the respective leases. No specimen lease was provided in this case.

Applicant's Submissions

10. Mr D S Quinton, Major Works Co-ordinator of Napier Management Ltd made submission on behalf of the Applicant (Landlord).
11. Napier Management Services is the appointed managing agent by Tyrrel Investments Inc. The reason for the application was the bad ingress of water (into Flat 1) and the tenants had advised their letting agent that in their opinion the flat was not habitable. Further delay in correcting water ingress points will allow current damp levels to worsen.
12. Napier were notified of the problem on 8th November 2016 and instructed Greenward Associates Chartered Surveyors and Designers to visit and report.
13. The works required were identified and the surveyors were instructed to prepare a Schedule of Work and put the work out to tender. That report was prepared in December 2016.
14. Notice of Intention to undertake repairs works was issued (to all lessees) on 24th January 2017 and the Section 20ZA made concurrently.
15. Following submission of tenders, a tender report was prepared on 21st December 2016. Four contractors had been asked to quote and three had returned quotes at figures ranging from £4,865.00 to £9559.38 excluding VAT.
16. In his report the surveyor recommended that the lowest quote be ignored and the second highest accepted:

'Although Prestige Building Contractors Ltd tender is the lowest return, it is half the price of the other two returns which gives the impression that it may not have been priced correctly. In this regard it is advised to disregard the return from Prestige Building Contractors Ltd.

The two remaining returns from In Sync Group and Greendale Construction Ltd are extremely close in price, In this regard, it is advised that the lower of the two returns be accepted.'

Respondent's Submissions

17. None of the Leaseholders made written or oral submissions in relation to the application.

The Tribunal's Deliberations

18. The Tribunal considered all the written evidence presented as summarised above.
19. The submission of Mr Quinton was sufficiently detailed to enable the Tribunal to conclude that an inspection of the damage was not necessary nor would it assist in this case. In making its decision the Tribunal, therefore, had sight of all the relevant documentation.
20. The approach for the Tribunal to take when considering an application for dispensation was set out in the Supreme Court's judgement in *Daejan Investment Limited v Benson et al* [2013] UKSC 14. In summary the approach to be adopted is as follows:
 - (1) The Tribunal should identify the extent to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;
 - (2) That no distinction should be drawn between "a serious failing" and "technical error, minor or excusable oversight" save in relation to the prejudice it causes;
 - (3) That the financial consequence to the landlord of not granting a dispensation is not a relevant factor when the Tribunal is considering how to exercise its discretion under section 20ZA;
 - (4) The nature of the landlord is not a relevant factor.
21. Applying the tests set out above the Tribunal concluded that no prejudice to the Leaseholders has occurred. The leaking roof requires attention as a matter of urgency. It was simply not practicable or possible for the Applicant to carry out the full consultation exercise under Section 20. The Applicant had however applied for dispensation before commencing work. The Applicant had done the best it could by obtaining a report, schedule of works and quotations after which it issued Notice of Intention. The Tribunal noted however that the Notice of Intention could have been issued at the point at which the report was received (December 2016) allowing the Lessees more time to consider the implications of the work to be undertaken however even allowing for this the Tribunal considered that there was no resulting prejudice to the Lessees.
22. The cost of the work exceeds the Section 20 limit of £250.00 per property by £1135.25.
23. The work will have to be undertaken in any event. Three written quotations had been obtained by the Applicant following the process of obtaining a report and then seeking quotations. This is similar to the process which would have had to be undertaken had the Applicant proceeded formally down the Section 20 route but without the statutory

formalities from which the Applicant seeks dispensation. The Tribunal is, as a consequence, unable to identify any prejudice suffered by the tenants.

24. The Tribunal concluded that dispensation, under section 20ZA of the Act should be granted.
25. The reasonableness of the cost and standard of the work proposed is not in issue before this Tribunal. This Application only asks the Tribunal to dispense with the consultation requirements. It is not an application to consider the reasonableness of the works or the reasonableness or payability of the service charge which will arise from this expenditure. If there is any dispute about those matters, then it will have to form the basis of a separate application under section 27A of the Act.

Appeal Provisions

26. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
27. 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.
28. 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.

Robert T Brown
Chairman