



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

Case Reference : CHI/00ML/LDC/2020/0085

Property : 20 Palmeira Square, Hove, BN3 2JN

Applicant : 20 Palmeira Square Management Ltd

Representative : Marcus Staples of Deacon Crickmay Asset Management

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 : 3 December 2020 on the papers

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to the small flat roof under the fire escape.

In granting dispensation in respect of the Application 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 Applicant explains that dispensation is sought because the discovery of the need to carry out the repairs to the flat roof only became apparent in the middle of a programme of works already in progress under two different specifications that had already caused significant disruption to the leaseholders of the ground and basement flats. In addition the Applicant says that sufficient sums had already been collected but not used for various contingency works so it was not necessary to request additional funds from the other leaseholders. The repair works to the flat roof were nonetheless not referred to within the First and Second Notices.
3. The Tribunal made Directions on 5 November 2020 indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
4. The Applicant was required to send a copy of the Directions to the parties notified as Respondents together with a form for the Respondents to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
6. No objections or requests for an oral hearing have been received and as such the Lessees have been removed as Respondents in accordance with the above paragraph and the application is determined on the papers received.
7. 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

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

S.20 ZA Consultation requirements:
 - i. 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.

9. 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
- ii. 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.
 - iii. 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.
 - iv. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - v. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - vi. 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).
 - vii. 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.
 - viii. 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.
 - ix. 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.
 - x. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

10. In his witness statement Mr Staples explains that in 2019 consultation procedures were undertaken with regard to

“Structural and associated works to strengthen floor of rear bedroom to ground floor flat”. Work started in August 2020 during which rot was discovered to a small recessed flat roof under the fire escape where it met the rear elevation. The rot extended to the decking and the ends of the flat roof joists and contributed to the decay of the timber beam under the flank external wall.

11. The leaseholder of the ground floor flat, also a director of the freehold company emailed the other leaseholders advising of the position and asking their views. Those who responded supported having the work done as soon as possible.
12. Dispensation is requested on the grounds that the necessary repair works only became apparent during the course of the works to the kitchen of the basement flat and to have a delay of three months to carry out full consultation would have caused significant further disruption.

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 the requirements.
14. The case of Daejan v Benson referred to above provides guidance to the Tribunal when considering the issues raised by all parties.
15. No Lessee has objected to the application and no evidence of prejudice as referred to in the Daejan case has been identified.
16. It is clear that the repairs the subject of this application could not have been identified at an earlier stage and that it is reasonable for them to be carried out in conjunction with the works for which consultation was carried out.
17. **For these reasons dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to the small flat roof under the fire escape.**
18. **In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
19. **The Applicant is required to send copies of this determination to the Lessees of the flats concerned.**

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 RPSouthern@justice.gov.uk. 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 appeal is seeking.