FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/ 29UN/LDC/2019/0037
Property	**:**	1-12 West Lodge, 20-21 Roxburgh Road, Westgate-On-Sea, Kent CT8 8RX
Applicant	**:**	West Lodge RTM Company limited
Representative	**:**	
Respondent	**:**	-
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	**:**	Mr D Banfield FRICS
Date of Decision	**:**	26 June 2019

DECISION

The Tribunal grants dispensation from the outstanding consultation requirements of S.20 of the Landlord and Tenant Act 1985 for remedial work to the timber balconies.

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 Applicant explains that work is required to restore the timber balconies without further delay. The Notice of Intention expired on 9 April 2019 and competitive tenders are expected to be returned by 17 May 2019. Dispensation is required from issuing the Statement of Estimates and Statement of Reasons (if applicable)

3. The Tribunal made Directions on 17 May 2019 requiring the Applicant to send a copy of the application and the Tribunal's Directions to each lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the Applicant and whether an oral hearing was required.

4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents

5. Two replies have been received both agreeing to the application and the lessees have therefore been removed as Respondents as previously indicated.

6. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.

7. The only issue for the Tribunal is if 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:

   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.

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

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

Evidence

10. The bundle submitted by the Applicant contains an email from Neal Highfield MRICS dated 1 March 2019 expressing his concern regarding the condition of the balcony and advising that access should be prevented.

11. Also submitted was a priced specification for the proposed works, a tender analysis dated 29 May 2019 and a Statement of Estimates dated 6 June 2019 the consultation period for which expires on 8 July 2019.

Determination

12. The work is clearly required and, with the exception of the final consultation period all the consultation requirements have been met.

13. No objections have been received and no evidence has been provided indicating that the lessees have been prejudiced in the manner considered in the Daejan case referred to in paragraph 9 above.

14. In these circumstances I am satisfied that the dispensation requested should be given.

15. In accordance with the above the Tribunal grants dispensation from the outstanding consultation requirements of S.20 of the Landlord and Tenant Act 1985 for remedial work to the timber balconies.

16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

D Banfield FRICS
26 June 2019

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 appeal is seeking.