



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

Case Reference : CHI/ 00HG/LDC/2019/0007

Property : 1 Clarence Place, Plymouth, Devon PL2 1SF

Applicant : 1 Clarence Place Management Co Ltd

Representative : Freehold Management Services

Respondents : -

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 : 28 March 2019

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work to repair the rendering.

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 a report was received that a large section of rendering to the side of the building above a public footpath and roadway was in imminent danger of falling off. Immediate remedial action was required with no time to consult leaseholders.
3. Directions were made on 14 February 2019 indicating that the application would be determined on the papers in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objection has been received and this determination is therefore made reliant on the application and subsequent documents received from the parties.
4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents
5. No replies have been received and as indicated in Directions the lessees are therefore removed as Respondents.
6. 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

7. 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.
8. 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

- 9. In the Applicant's bundle provided were photographs of a flank wall abutting a pavement from which large sections of render had fallen.
- 10. In the witness statement of Donald Gerrard of Freehold Management Services Limited reference is made to the instructions from the City Council Buildings Inspector to erect scaffolding and carry out remedial works.

Determination

- 11. 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.
- 12. It is clear that urgent work was required to render the area safe and that a delay whilst consultation took place was unacceptable.
- 13. No lessee has objected to the application and the Tribunal finds that the type of prejudice referred to in the Daejan case referred to above has not been demonstrated.

14. In view of the above the Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work to repair the rendering.

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

D Banfield FRICS
28 March 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.