



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

**Case Reference** : CHI/ 45UF/LDC/2019/0058

**Property** : Elm House & Bluebell Court, Rapley Rise  
RH13 9FN

**Applicant** : Moat Homes Limited

**Representative** :

**Respondent** : -

**Representative** :

**Type of Application** : To dispense with the requirement to  
consult lessees about a qualifying long-  
term agreement

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Decision** : 7 October 2019

**The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in entering into a Qualifying Long Term Agreement with BSI Assurance UK Limited.**

**In granting dispensation, the Tribunal makes no determination as to whether any servicing 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 as landlord they have an obligation to service the communal boiler flues annually. They wish to place a maintenance contract for annual servicing but as there is only one contractor available to undertake the work it was not possible to go out to tender to demonstrate best value.
3. The Tribunal made directions on 30 July 2019 requiring the Applicant to serve the application and the directions on the lessees. Together with the directions was a form for the lessees to complete indicating whether they agreed with the application and whether an oral hearing was required.
4. No lessee objected to the application and as indicated in the directions they have been removed as Respondents.
5. There were no requests for an oral hearing and the application is therefore determined on the papers in accordance with Rule 31 of the Tribunal's procedural rules.
6. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application 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:  
(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
  - a) 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.
  - b) 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.

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

## **Evidence**

- 9. The Applicant explains that their servicing obligations require them to arrange for the communal flues to be serviced annually. The Management Agency, Courtney Green confirmed that the only contractor who could undertake the work was BSI. As such it was necessary to apply for dispensation as they could not serve a Section 20 Notice to enter into a Qualifying Long Term Agreement.
- 10. The bundle contains the report and quotation from BSI and correspondence from Courtney Green confirming that they are the only suitable contractor.

## **Determination**

- 11. The evidence indicates that it was not possible to seek competitive tenders for this necessary work. No objection has been received from any of the lessees and no evidence of the type of prejudice referred to in paragraph 8 above has been identified.
- 12. In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in entering into a Qualifying Long Term Agreement with BSI Assurance UK Limited.**

**13. In granting dispensation, the Tribunal makes no determination as to whether any servicing costs are reasonable or payable.**

D Banfield FRICS  
7 October 2019

14. 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.
15. 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.
16. 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.