



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

Case Reference : CHI/ 45UH/LDC/2019/0074

Property : Onslow Court, Brighton Road, Worthing
BN11 2PL

Applicant : Alan Coates as Tribunal appointed
manager

Representative : HML

Respondents : -

Representative :

Interested Persons : Spearglade Limited

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 31 October 2019

DECISION

In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the works of repair to the boiler flue as referred to in the application.

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. (the 1985 Act)
2. The Applicant explains that urgent repairs were required to the boiler flue at the property.
3. The Tribunal made Directions on 24 September 2019 requiring the Applicant to serve a copy of the application and the Directions on each of the lessees. Included with the Directions was a form for the lessees to complete indicating whether they agreed with or objected to the application. The Directions also noted that lessees who agreed with the application or did not return the form would be removed as Respondents.
4. Twenty lessees responded agreeing to the application and as indicated all lessees have therefore 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. At page 16 of the determination bundle is a report setting out the circumstances behind this application. During a visit by contractors in July 2019 it was discovered that the boiler flue was in a state of disrepair and required replacement before the communal heating boilers could be operated.
- 10. A quotation was received on 7 August 2019 and instructions to proceed were given on 4 September 2019.
- 11. Due to the need to provide heating during the autumn season there was insufficient time to carry out the consultation requirements of Section 20 of the Act.

Determination

- 12. I accept that it was necessary to complete the works as a matter of urgency and note that none of the lessees have objected to the application.
- 13. No prejudice to the lessees has been demonstrated as referred to in the Daejan case referred to in paragraph 8 above and in these circumstances I am prepared to grant the dispensation requested.

- 14. In accordance with the above, the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the works of repair to the boiler flue as referred to in the application.**
- 15. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
31 October 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.