



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

**Case reference** : **LON/00AH/LDC/2020/0031**

**Property** : **51 Morland Road, Croydon, Surrey  
CR0 6HA**

**Applicant** : **Southern Land Securities Ltd**

**Representative** : **Together Property Management**

**Respondents** : **Mr K Cibiliovas and Mrs K Cibiliova  
Mr M Ceylan  
Ms W Zhao  
Ms C Talbot**

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

**Tribunal member(s)** : **Judge Sheftel**

**Date and venue of  
Paper Determination** : **12 March 2020 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **12 March 2020**

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**DECISION**

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**Decision of the tribunal**

- (1) The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the lift as set out in paragraph 9 below.**
- (2) In granting dispensation in respect of the application, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **The application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements required by Section 20 of the 1985 Act.
2. Directions were issued on 12 February 2020. These provided that the Tribunal will determine the application on the basis of written representations, unless any party makes a request for an oral hearing by 4pm on 21 February 2020.
3. No requests have been received for an oral hearing and the application is therefore determined on the papers received.
4. By letter to the Tribunal dated 27 February 2020, the Applicant's representative confirmed that no observations have been received from any leaseholders at the property.
5. 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. Indeed, according to the Applicant's statement of case, there are separate, ongoing proceedings (LON/00AH/LSC/2019/0387) in which the leaseholders are disputing the reasonableness of costs.

## **The law**

6. The relevant section of the 1985 Act reads as follows:

“20ZA Consultation requirements

(1) Where an application is made to the appropriate 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.”

7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
  - 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.

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

### **Background**

8. The property was originally built as a double fronted semi-detached house. It has since been converted into self-contained flats.
9. In the present case, the Applicant seeks dispensation in respect of repairs to the roof, necessitated by water ingress to the top floor flat (flat 4). According to the application, following flat 4 experiencing water ingress, the managing agents instructed a contractor to attend. The contractor confirmed that roof repairs were required and a quote for £1,654 was provided.

10. The quote was emailed by the managing agents to all leaseholders of the property on 4 February 2020, offering them the opportunity to obtain an alternative quote within 48 hours if they so wished. The email also informed the leaseholders that the cost of the works was above the consultation limit and that accordingly, the Applicant would be applying for dispensation. Later the same day, the leaseholder of flat 4 replied by email on behalf of the other leaseholders, asking the managing agents to proceed with the quote. The works were subsequently carried out and an invoice from the contractor dated 20 February 2020 is contained in the bundle.
11. According to page 8 of the application, the Applicant seeks dispensation on the basis that the works were carried out urgently *“as we wanted to stop further damage to the flat which, if left could have caused further damage to the flat and potentially emitted into the floors and communal hallway below”*.

### **Decision**

12. On the facts of the present case, the Tribunal notes that:
  - (1) the works were required as a matter of urgency;
  - (2) none of the Respondents has objected to the application; and
  - (3) no evidence has been submitted identifying the type of prejudice referred to in paragraph 7 above.
13. In the circumstances, it is considered that it is reasonable to dispense with the consultation requirements for the specific works. Accordingly, the Tribunal grants dispensation from the consultation requirements of S.20 of the 1985 Act in respect of the works set out at paragraph 9 above.
14. In granting dispensation in respect of the application, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

**Name:** Judge Sheftel

**Date:** 12 March 2020

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).