



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

Case Reference : CHI/29UM/LDC/2020/0010

Property : 301 High Street, Sheerness, Kent ME12
1UT

Applicant : Influential Consultants Limited

Representative : Mr J Thompson

Respondent : Mrs C Willens

Representative :

Type of Application : Dispensation with consultation

Tribunal Member(s) : Judge D. R. Whitney

Date of decision : 10th June 2020

DETERMINATION

Background

1. The Applicant is the freeholder of the Property. The Respondent is the owner of a leasehold flat in the Property being Flat B (Top Floor Flat).
2. The Property is a semi-detached house now converted into three leasehold flats. The remaining two flats support the application. Both of these flats are owned by entities connected to the freeholder.
3. This application follows a previous decision dated 24th January 2020 case reference CHI/29UM/LSC/2019/0078 involving the same parties and which determined the liability of the Respondent to this application to pay certain service charges and the reasonableness of the same. The decision found that in respect of certain major works the freeholder had failed to conduct a valid consultation pursuant to section 20 of the Landlord and Tenant Act 1985. The decision invited the freeholder, if they so wished to make an application for dispensation.
4. This is the Applicants application for dispensation. Directions were issued dated 7th February 2020. The parties have substantially complied with the same. The parties all agreed to this matter being determined upon the papers. The tribunal is satisfied having considered the bundle that it is appropriate to proceed to determine the matter on the papers. A bundle of documents has been supplied by the Applicant. References in [] are to pages within that bundle.

DETERMINATION

5. This is the latest in a substantial catalogue of previous cases involving the parties. A list can be found at [148]. The Judge determining this matter was also a panel member on case reference CHI/29UM/LSC/2019/0078 [164-171]. As a result he has had the benefit of hearing the evidence in that case and having inspected the Property prior to that case.
6. Both parties have referred to that determination and the tribunal has read and considered that carefully together with all other documents within the bundle. Further both parties have referred to the leading case of Daejan Investments Limited v. Benson and others [2013]UKSC 14. The tribunal readily accepts that this is the leading authority and is binding upon this tribunal.
7. In particular the tribunal has considered the statement of Mr Thompson [156-163] and application form notably the grounds [19] and the Respondents statement of case [67-75].

8. The tribunal reminds itself that in this application it is only concerned with whether dispensation should be granted. The reasonableness or otherwise of the costs is not at issue.
9. The issue here is that the Applicant proceeded and had undertaken various works to the internal common areas including damp proofing works, redecorations and re-carpeting of the communal areas. Whilst the Applicant did undertake a consultation exercise in the earlier case it was found that the first stage notice, Intention Notice,[172-173] did not adequately set out the works to be undertaken. The notice served referred to what can best be described as internal decorations and re-carpeting but did not mention damp proofing works.
10. The Respondent replied to this notice [83] agreeing to these works and proposing a contractor.
11. Subsequent to this notice the Applicant appointed a surveyor who recommended damp proofing works were undertaken. The surveyor prepared a specification and this specification was emailed to the Respondent by the Applicant on 24th October 2018 [87]. The second stage notice together with a covering letter was sent on 20th December 2018 [120-123]. Ultimately the Applicant proceeded with the cheapest quotation from Terry & Carr Ltd.
12. The tribunal in the earlier case determined that the consultation had not been properly undertaken as the description of the works undertaken in the Intention Notice did not match those carried out. The tribunal in that case accepted that information had been provided to the leaseholders as to the works including provision of the specification but this was not compliant with the requirements of the statutory consultation exercise.
13. The Respondent raises various issues as to the quality of the works and her concerns as to whether the works were properly completed. These matters were raised and considered by the tribunal in the earlier case determining the reasonableness of the costs incurred.
14. The Respondent challenges the Applicants right to dispensation. In short, she suggests that the Applicant has provided no good reason for not properly consulting and suggests prejudice. Her arguments are eloquently set out in her statement.
15. The Applicant for their part suggests that whilst they accept the earlier decision they believe that they did “informally” consult fully with the Respondent. They deny the Respondent has suffered any loss.
16. The original notice was invalid. It would have been possible for the Applicant to serve a fresh notice referring to the damp proofing works and looking at the time line of events this would not have affected, in this tribunal’s determination, the timing for the works being undertaken. This was an error on the part of the Applicant.

17. However it is clear that the specification and other documents were provided to the Respondent and other leaseholders. Such documents were provided ahead of the second stage notice being sent out. The Respondent did in fact raise comments upon these. We accept that the Applicant instructed the surveyor after the intention notice and following comments raised by the Respondent, it is unfortunate no one thought to re-issue the intention notice.
18. We have considered whether or not the Respondent has suffered prejudice and if so should any conditions be attached to granting dispensation. We are not satisfied that the Respondent has established prejudice. Whilst she refers to harm and the huge volume of correspondence and litigation sadly as the list of cases show this is a feature of the relationship between the parties. As the Respondent states at paragraph 11 of her statement [68] in reference to the Parties “they do not get on.” This tribunal is not satisfied that this of itself can amount to prejudice in this instance. It is plain the Respondent could and did engage with the process including the amended specification when provided to her.
19. The tribunal is satisfied that the Applicant was endeavouring to comply with the statutory requirements of which it was fully aware. The Applicant believed having a surveyor review and prepare a specification prior to going out to tender was good practice. Whilst the tribunal agrees this was prudent this step should have been undertaken prior to the intention notice so that the proposed works could have been adequately described. In this instance they were not. This was an error. The tribunal does however take account of the fact that it is clear from the correspondence that the Applicant attempted to be transparent in his dealings with the Respondent by sending the specification and engaging in correspondence with the Respondent.
20. As a result, this tribunal reaches the determination that it is just and equitable for dispensation to be granted. The tribunal grants such dispensation conditional upon the Applicant not seeking to recover the costs of this application as a service charge expense. The tribunal determines that this is just and equitable given the costs have been incurred purely as a result of the Applicants failure to follow the statutory consultation regime.
21. By way of postscript the tribunal comments that the Respondent refers to this setting a precedent. To be clear it does not. The Applicant is required to comply with the requirements to consult. If they fail to do so any subsequent applications will be considered upon their own merits. The tribunal in such cases may or may not grant dispensation.

Judge D. R. Whitney

RIGHTS OF APPEAL

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.
2. 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.
3. 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.
4. 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 application is seeking

