



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

Case Reference : CHI/00MR/LDC/2020/0029

Property : Warrior House
12-14 The Hard
Portsmouth
PO1 3DT

Applicant : Freehold Services Ltd

Representative : Parkfords Management

Respondent : Mr Neil Kemble

Representative : None

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

Tribunal Member(s) : Mr I R Perry FRICS

Date of Decision : 3rd June 2020

DECISION

The Tribunal grants partial dispensation from all or any of the consultation requirements of Section 20 Landlord and Tenant Act 1985 in respect of ‘the investigation into the cladding and any advised remedial works’ as detailed in the application.

This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from all of the consultation requirements imposed on the Landlord by Section 20 of the 1985 Act with regard to works to be carried out at the property namely ‘Investigations into the cladding and advised remedial works’ (The Works).
2. There has been general concern about the materials used in cladding residential blocks of flats following the fire at Grenfell Tower in London on the 14th June 2017, some nearly three years ago.
3. Within the budget of 11th March 2020 the UK Government announced a £1billion fund for works to cladding on high rise buildings ‘to remediate all unsafe materials from private and social sector residential buildings above 18m’.
4. On 13th March 2020 Freehold Services Limited (the Applicant) made an application to the First-Tier Property Tribunal for dispensation from Section 20 of the Landlord and Tenant Act 1985 in respect of The Works. No estimate of the cost of The Works was given.
5. A notice of intention was also served on the Lessees of the building on 13th March 2020.
6. The application was received by the Tribunal office on 16th March 2020.
7. The reason given for the application was stated as ‘Unknown cladding on the building and considered a possible fire safety risk’.
8. On 19th March 2020 the Tribunal issued directions requiring any Lessees objecting to the dispensation being granted to complete an application form and return it to the Tribunal by 17th April 2020.
9. On 4th April 2020 Mr Neil wrote objecting to the dispensation on the grounds that the co-joining of two operations, investigation and remedial

works, would ordinarily be kept separate to assure independence and competitive commercial quotations.

10. Mr Neil confirmed that he was supportive of the investigation being carried out and was able to refer the Applicants representative to the architects who had been involved in the original construction of the building. He also pointed out that the Applicant had given no evidence that this was an urgent issue.
11. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether the amount of any service charge costs will be reasonable or payable.**

The Law

12. 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.
13. 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
 - 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.

Discussion and Decision

14. 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.
15. The Tribunal commends the Applicant for wishing to carry out a survey and undertake any remedial works that are needed to ensure fire safety and security of the building, and that this be done as soon as possible.
16. The Respondent does not object to this in principle but requests that the investigation and subsequent remedial works are kept separate to ensure that there are competitive commercial quotations for the works once the extent of the works are known.
17. **In view of the above the Tribunal grants partial dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of the investigation works. If appropriate the Applicant shall then be able to make a further application for the remedial works if they are of an urgent nature.**
18. **In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

I R Perry FRICS
3rd June 2020

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 application is seeking.