



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

Case reference : **MAN/30UF/LDC/2020/0002**

Property : **29 St Annes Road West, Lytham St
Annes, Lancashire, FY8 1SB**

Applicant : **West Beach House Management
Company Ltd**

Representative :

Respondent : **Leaseholders at the Property**

Representative :

Type of application : **Dispensation with Consultation
Requirements under section 20ZA
Landlord and Tenant Act 1985.**

**Tribunal
member(s)** : **Judge J White
Ms S D Latham (valuer)**

Venue : **Northern Residential Property First-tier
Tribunal, 1 floor, Piccadilly Exchange, 2
Piccadilly Plaza, Manchester, M1 4AH**

**Date of
determination** : **26 August 2020**

Date of Decision : **5 October 2020**

DECISION

The Decision

- (i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 in respect of the work to repair the guttering, rain water pipe and

any defective slates as set out in the tender from J W Kenyon Construction.

- (ii) In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

The Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Property is a Victorian style house converted into 8 flats in 2001. It has a stairwell and a lift . It has a lower ground floor at the rear, with a ground, first and second floor level. The qualifying works are to erect scaffolding, replace the defective guttering, replace rainwater pipes with 4-inch ones, inspecting, and carrying out any remedial work to the roof slates and felt. In addition, brickwork will be inspected. A Section 20 Notice 1 had been sent on 19/12/19. A Notice 2 was due to follow and works to commence on 14 January 2019.
3. Works were said to be urgent due to serious ingress of water into the top flat and work is required urgently to rectify the defects and prevent further damage to the Property and safeguard the health and safety of residents. The scaffolding cost is over the s20 threshold.
4. On 27 February 2020, the Tribunal issued Directions. In accordance with those directions the Applicant submitted a bundle of documents to the Tribunal and each Leaseholder.
5. No objections or submissions were received from any of the Leaseholders.
6. The Directions stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected. The Tribunal convened on 26 August 2020 without the parties to determine the application. It decided that there was enough evidence to determine the application without the need for an inspection or oral hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective.

The Evidence

7. The Applicants case is set out in a Statement of Case with supporting evidence, including copies of the Leases. A Section 20 Notice Part 1 was issued on 19 December 2019 to remedy serious water ingress to

the top flat. The work to “include but not limited to scaffolding, replacing defective guttering, remedial work to the roof slates and inspection of brickwork” [270]. No written observations were received.

8. On 29 January 2020 a Section 20 Notice 2 was issued containing one estimate obtained, following a tendering process. The estimate was for £5,600 plus VAT (£6,720) from J W Kenyon Construction [272 and 274]. The Respondent states that no responses were received from the Leaseholders. The cost includes £3,500 for the scaffolding, £700 for the guttering, £1250 for replacing the 4-inch rainwater pipe and £150 for slate repairs.

The Law

9. 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.

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

- (i) 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.
- (ii) 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.
- (iii) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- (iv) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- (v) 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).
- (vi) 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.

- (vii) 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 noncompliance has in that sense caused prejudice to the tenant.
- (viii) 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.
- (ix) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

The Determination

11. The works proposed are clearly Qualifying Works triggering consultation requirements in accordance with S20ZA (2) of the Act. The amount exceeds £250 for any qualifying tenant as set out in the Leases. The amount each leaseholder is liable to pay varies between 9.5% and 14%.
12. 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.
13. No lessee has objected to the application and no prejudice as referred to in the *Daejan* case above has been identified. The works are urgent, any delay is likely to result in more extensive repairs being necessary and cause water penetration into the Property. The Applicant has started consultation process, thereby giving the tenants an opportunity to make any objection to the nature, extent, and cost of the work.
14. For the reasons set out above the Tribunal grants dispensation from the consultation requirements of S.20 the Act in respect of the work to repair the guttering, rain water pipe and any defective slates as set out in the tender from J W Kenyon Construction [274].
15. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Judge J White

RIGHTS OF APPEAL

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.