



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

Case Reference : CHI/00HN/LDC/2020/0086

Property : 19 Lansdowne Road, Bournemouth,
Dorset, BH1 1RZ

Applicant : Sorda Limited

Representative : ECM Management Limited

Respondent : Alesandro Guiseppe Domenico Ciangola
(Flat 12)
Peter Sydney Shepherd (Flat 15)

Representative : Laurence Pearl for Mr Shepherd only

Type of Application : To dispense with the requirement to
consult lessees about major works section
20ZA of the Landlord and Tenant Act 1985

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 31 March 2021

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to repair the roof.

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

The Applicant is to send a copy of this decision to each of the Lessees contributing to the service charge.

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.
2. The Applicant explains that the Property is a purpose- built block of flats with ground floor retail units and that the roof space was converted to four additional flats in or about 2013. A roof leak is said to have been reported by the tenant residing in Flat 11 on 6 December 2018 and it is said that due to the height of the building scaffolding was required. At the time the work was considered urgent and the estimated costs fell below the level requiring consultation. The total cost of the work is said to have been £5280, described as £1320 per leaseholder. Reference is made to an insurance claim having been made but refused.
3. Directions were issued on 23 November 2020, 18 December 2020 and 6 January 2021.
4. The Tribunal indicated that it considered that the application was suitable to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
5. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
6. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
7. Two responses were received and in accordance with the preceding paragraph the other lessees have been removed as Respondents.
8. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
9. On receipt, the contents of the hearing bundles were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the facts relevant to the application were largely undisputed.
10. 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 any service charge costs will be reasonable or payable.

The Law

11. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:

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.

12. 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
- i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA 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 non-compliance 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.

Evidence

- 13. Both parties have submitted considerable amounts of evidence in respect of the terms of the Respondents' leases, the attempts to recover costs through an insurance claim, the effect of the service charge demands remaining unpaid and whether those demands were made in accordance with the lease and statute.
- 14. None of these issues are relevant to whether dispensation should or should not be granted and I only propose to refer to those parts of the submissions which relate to whether the Respondents have been prejudiced by the failure of the Applicant to comply with the consultation requirements of s.20.
- 15. In its statement of case the Applicant explains that following a report of a roof leak from the leaseholder of Flat 11 on 6 December 2018 a quote for scaffolding was obtained from AKT Roofing following which an unsuccessful insurance claim was pursued through their brokers.
- 16. The lessees were advised that it was not economically viable for the scaffolding erected for the purpose of inspection to be dismantled and re-erected to commence roof repairs and an urgent decision as to whether they accepted liability for the costs was required.
- 17. In the Respondents' identical Statements of case they say that it was clear from 20 December 2018 that the costs of works would require a S.20 consultation to be carried out. The increased cost of scaffolding arising from the delay whilst an insurance claim was pursued, the failure to obtain competitive quotations and the denial of the Respondents' right to nominate a suitable contractor has caused them prejudice.
- 18. In reply, the Applicant accepts that formal consultation was not carried out but that all leaseholders had been extensively involved and the expenses were communicated to the lessees throughout. No evidence has been produced that the Respondents have been financially prejudiced.

Determination

- 19. 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 those requirements. Guidance on how such power may be exercised is provided by the leading case of *Daejan v Benson* referred to above.

20. The only issue for the Tribunal to determine is whether the evidence before it indicates that the lack of consultation has caused the Respondents financial prejudice. Clearly the lack of a tendering process has denied the Respondents the comfort of knowing that a competitive price for the work has been obtained. Likewise, the Respondents have been denied the opportunity of nominating a contractor. With regard to any increase in costs caused by delays in carrying out the work whilst pursuing an insurance claim, this can be pursued through an application under S.27A and is not relevant to this application.
21. In support of the claim that prejudice has arisen no evidence has been provided as to how the lack of consultation itself has increased the Respondents' liability for costs. No evidence of alternative estimates has been submitted or an indication of what the Respondents would have done differently if they had been consulted.
22. On the evidence before me therefore I propose to grant the dispensation requested. In doing so I make no determination as to whether the costs are reasonable, whether the costs have been apportioned in accordance with Clause 16 of the sixth schedule to the leases and whether the demands have met the statutory requirements.
23. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to repair the roof.**
24. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
25. **The Applicant is to send a copy of this decision to each of the Lessees contributing to the service charge.**

D Banfield FRICS
31 March 2021

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 by email to rpsouthern@justice.gov.uk 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.