



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

Case reference : **CAM/00MA/LDC/2 021/0014**
P:Paperremote

Property : **1 – 25 Ferriby Court Bracknell
Berkshire RG12 1DU**

Applicant : **Silva Homes**

Respondent leaseholders : **PHG Asset Holdings (Flat 21)
Mr S P T Bird and Mr H C Bird (Flat
14)**

Type of application : **To dispense with the consultation
requirements under S.20 Landlord
and Tenant Act 1985**

Tribunal member(s) : **Mrs E Flint FRICS**

**Date and venue of
determination** : **Remote on the papers**

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondent. A face to face hearing was not held because it was not practicable, no-one requested the same, and all the issues could be determined on the papers. The documents that I was referred to were emailed to the Tribunal, the contents of which I have recorded.

Decision of the tribunal

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to the replacement of the covering to the first floor promenade which gives access to the flats.
- (2) The question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Background

1. The application under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) was made by the applicants on 29th April 2021.
2. The application concerned the replacement of the covering to the first floor promenade.
3. Directions were issued on 17 May 2021 requiring the applicant to prepare bundles by 11 June 2021 to include statements
 - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies and copies of any replies from the tenants;
 - (ii) The Leaseholders were asked to confirm by 4 June 2021 whether or not they would give their consent to the application.
 - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon.
4. The only detailed response received was from the lessee of Flat 14.
5. The Leaseholders were informed in the Directions issued by the Tribunal that the question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Evidence

6. Ferriby Court is a three storey building comprising 6 retail units on the ground floor and 25 flats above. Access to the flats is via two staircases at either end of the block leading to the first floor promenade. Two of the flats are subject to long leases under which the lessee has

covenanted to pay a variable service charge which includes the costs of maintenance and repair of the common parts.

7. Since 2018 the Applicant had received a number of complaints from occupiers of the ground floor retail units that their premises were suffering from water ingress from above which had caused damage.
8. Patch repairs to the covering of the walkway had been carried out but had not rectified the problem. The Applicant was concerned that they could be held in breach of their repairing obligations. They had received a solicitor's letter on behalf of one of the retailers advising of the damage resulting from the water ingress.
9. On 18 January 2021 an inspection was carried. The asphalt covering was protected in part by concrete slabs, however the asphalt itself was in very poor condition and had failed in places allowing water to leak into the ground floor units.
10. It was recommended that the walkway be recovered in a new high performance system with a 25 year life span and 20 year guarantee. The covering would be fully cured within 20 minutes of being laid. It is estimated that the total cost of the work including fees and VAT is £146,400. However, the work would be subject to a tender process to ensure best value.
11. The lessee of Flat 14 stated that there was a history of leaks into the ground floor retail units going back at least 20 years and provided copies of correspondence relating to earlier periods of time.
12. No other leaseholder commented on the application.

The Decision

13. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
14. The Tribunal determines from the evidence before it that the works were necessary, were required to be completed urgently and that no prejudice to the lessees has been demonstrated or asserted.

15. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted.

Name: Evelyn Flint

Date: 16 June 2021

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.