



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

Case Reference : CHI/18UH/LDC/2021/0082

Property : 42 Fore Street, Bovey Tracey, Newton
Abbot, TQ13 9AD

Applicant : Mr Arthur & Mrs Christine Grummit

Representative : Kate Drew
Carrick Johnson Management Services Ltd

Respondent : Mr IJ and Mrs SN Simmons

Representative :

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 : 21 October 2021 without a hearing (rule 6A
of the Tribunal Procedure Rules 2013 as
amended by The Tribunal Procedure
(Coronavirus) Amendment Rules 2020 SI
2020 No 406 L11.

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the erection of scaffolding, repointing of a chimney, the hacking off and replacement of rendering to the side elevation and related work. Internal plaster to Flat 3 requiring tanking, plaster-boarding and skimming.

The granting of dispensation is conditional upon the Applicants obtaining, or demonstrating that they have already obtained, competitive quotations for the works copies of which are to be sent to the Respondents prior to commencement of the works.

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 determination to all of the lessees liable to contribute to service charges.

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 Landlord and Tenant Act 1985. (The Act).
2. The Applicant explains that the Property has three storeys comprising 4 flats and 1 shop. The application is said to be urgent because of water ingress into Flat 3 which is affecting the sale of the property and during heavy rain is causing further damage. The works have not started.
3. The work required is described as repointing of a chimney, the hacking off and replacement of rendering to the side elevation and related work. Internal plaster to Flat 3 will require work involving tanking, plasterboarding and skimming. The works will involve the erection of scaffolding. It is said that a survey report (not filed) has been obtained.
4. The Tribunal made Directions on 14 September 2021 indicating that it considered that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
5. The application has therefore been determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.
6. The Tribunal served the Directions on the parties named by the applicant as Respondents included with which was a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.

7. Three lessees replied agreeing with the application and they have therefore been removed as Respondents. An objection was received from the lessees of Flat 2 and they remain as the sole Respondents. The protection afforded to lessees by S.20 of the Act only applies to residential property and the commercial lessees are also removed as Respondents.
8. Before making this determination, the papers received 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 terms of the objection were clear and would not be illuminated by such a hearing.
9. 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

Part 2 of Schedule 4 to the 2003 Regulations. (see appendix for full text)

10. The requirements for consultation were set out in the Daejan case referred to below and summarised as;

Stage 1: Notice of intention to do the works Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons,

or specifying where and when such a statement may be inspected.

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. The circumstances of the application are contained in the application and recited in paragraphs 2 and 3 above.
- 14. Mr and Mrs Simmons have objected, stating; *"I would like to contest this request. I am not convinced that the current work to the Chimney Stack is being procured in the best way. I do not have the confidence that Carrick Johnson always find and provide the correct solution and associated costs. For example, why was there not a fixed price proposal offered? This may have been a higher initial cost but overall better value for money. Spending other people's money without being accountable or seeking permission first is not the correct way to proceed. This is an old building and costs could rise fast if not managed correctly. In addition, having the ability to check the proposal for work before it commences gives us the opportunity to ensure that we are getting the correct solution. Costs could easily spiral out of control without being able to challenge the decisions when it will be too late. I would like to ensure that the works are reasonable before they are commenced."*
- 15. No response to this objection has been received from the Applicant.

Determination

- 16. 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.
- 17. The Tribunal's determination does not extend to whether all of the proposed works are chargeable to the Service Charge, whether they are recoverable under the lease or whether the costs are reasonable, these being matters capable of challenge under S.27A of the Act.
- 18. The Tribunal's determination is solely in respect of whether the Respondents would be prejudiced by the granting of dispensation from the consultation requirements outlined in paragraph 10 above. In general terms the legislation protects leaseholders from incurring costs for works of which they were not aware, enables them to make observations which the landlord is nevertheless not obliged to accept and to nominate a contractor from which a quotation must be sought.

19. In this case the necessity for the works or their urgency is not challenged the issue being the manner in which those works are to be procured.
20. It is stated by the Respondents that this is an old building where the cost of works could escalate if not properly managed and where a fixed price contract may offer better value for money. They lack confidence in the Applicants' agent and that they wish to check the proposals before they commence.
21. Subject to any challenge under S.27A the form of contract to be entered into is for the Freeholder to determine and not a relevant issue in this application. The Respondents have made their view known in the same way that they could have done in any consultation process. Whilst it is accepted that the financial outcome of any works to an old building is difficult to predict before works are undertaken I am not satisfied that the ability to be consulted prior to commencement of those works would affect the eventual outcome.
22. In view of the above I am not satisfied that the Respondents have suffered prejudice of the type identified in the Daejan case and as such I determine that dispensation can be granted.
23. The Applicant has not indicated whether competitive quotations have been sought or given any reason why such a course has not been followed and in the absence of any submissions by the Applicant I propose to make dispensation conditional upon competitive quotations being obtained.
24. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the erection of scaffolding, repointing of a chimney, the hacking off and replacement of rendering to the side elevation and related work. Internal plaster to Flat 3 requiring tanking, plaster-boarding and skimming.**
25. **The granting of dispensation is conditional upon the Applicants obtaining, or demonstrating that they have already obtained, competitive quotations for the works, copies of which are to be sent to the Respondents prior to commencement of the works.**
26. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
27. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
21 October 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.

Appendix

The Service Charges (Consultation Requirements) (England) Regulations 2003

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4.—(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6.—(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.