



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

Case Reference : **BIR/00GA/LDC/2022/0002**

Property : **28 John Tarrant Close Newton Farm Hereford
HR2 7JA**

Applicant : **Connexus Homes Limited**

Respondent : **Mr L Stachura**

Type of Application : **An application under section 20ZA of the
Landlord and Tenant Act 1985 for
dispensation of the consultation requirements
in respect of qualifying works.**

Tribunal Members : **V Ward BSc Hons FRICS – Regional Surveyor
J Rossiter MBA MRICS – Valuer Member**

Date of Decision : **23 March 2022**

DECISION

Background

1. By an application received by the Tribunal on 1 February 2022, the Applicant freeholder sought dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. The justification for the application provided by the Applicant was as follows. A boundary fence required re-instatement and in addition a further section was leaning. A full consultation with the leaseholder would have delayed the works until after Christmas 2021 so to maintain the safety and security of the residents, the Applicant implemented the works without consultation.
3. By Directions dated 8 February 2022, the Applicant was instructed by 24 February 2022 to send to the Tribunal and to the Respondent leaseholder:
 - a) A statement explaining the purpose of the application and the reason why dispensation is sought.
 - b) Copies of all invoices relating to the works.
 - c) If available, photographs of the fence and also a site plan showing the location of the same.

The Applicant complied with the above on 25 February 2022.

4. By the same Directions, the Respondent leaseholder was instructed by 10 March 2022 to complete the reply form provided with the Directions, and return it to the Tribunal, with a copy to the Applicant, indicating whether:
 - They consented to the application (i.e. agreed to dispensation from full consultation)

or, if they opposed the application (in whole or in part) and the reasons why.
 - Within their application, the Applicant had indicated that they were content with a paper determination. If the Respondent required an oral hearing, they were to indicate accordingly on the reply form.

The Respondent was advised if they failed to return the form, the Tribunal would assume that they did not oppose the dispensation application.

The Submissions of the Parties

The Applicant

5. The Applicant's submissions were very brief. There was little further explanation than that given within their application form. Essentially a boundary fence urgently required repair and it was not considered prudent due to security and health and safety concerns to undertake a full consultation with the requisite delay that would entail. The Applicant explained that the fencing works were qualifying works within a qualifying long term agreement (QLTA) - Subcontractor Framework. The Notice of Intent to enter into a QLTA was issued on 28.10.2020 (end date 03.12.2020) and the Notice of Proposals was issued on 11.06.2021 (end date 16.07.2021). Any works to be carried out within this QLTA and costing over £250.00 per leaseholder (as in this matter) would, under normal circumstances, require a notice of intent of qualifying works to be served on each contributing leaseholder.
6. Continuing, the Applicant said that if they had served the Notice of Intent of Qualifying works, in December, they would not have been able to carry out these works until after Christmas 2021. This would have put the safety and security of their residents at risk for a prolonged period of time which they did not consider appropriate. Therefore, the Applicant sought retrospective dispensation from the third stage notice of consultation, on the above grounds.
7. The Applicant provided a photograph of the fence line where the damaged panels have been removed leaving a substantial gap. Also provided, was a plan of the estate which showed the location of the fence line. The gap is on the southern fringe of the development abutting playing fields.
8. The Applicant exhibited the invoice from Stephen Preece Building Contractor for the works. This indicated that the cost of the new fence and gate was £4,840.00 including VAT.

The Respondent.

9. The Respondent did not return the reply form or make submissions of any kind.

Hearing and Inspection

10. As there have been no requests for an oral hearing and the Tribunal does not consider there is any necessity for the same, the Tribunal has determined this matter on the basis of the written submissions of the parties and without an inspection of the Property.

The Lease

11. The application before the Tribunal relates only to the requested dispensation from the statutory consultation regime in the Act as interpreted by the courts (see below).

The Law

12. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the consultation procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a leaseholder has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as ‘works to a building or any other premises’) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual leaseholder in excess of £250.00.
13. In *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”), the Supreme Court noted the following:
 - a) Prejudice to the tenants from the landlord’s breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20ZA (1).
 - b) The financial consequences to the landlord of not granting dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d) 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 tenant. It is not appropriate to infer prejudice from a serious failure to consult.
 - e) 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.

- f) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - g) Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). 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.
 - h) In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
 - i) The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
 - j) 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).
14. For the sake of completeness, it may be added that the Tribunal's dispensatory power under section 20ZA of the Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

The Tribunal's Determination

15. It is clear to the Tribunal from the submissions made that the works were urgently required to safeguard the security of the residents. This is endorsed by the fact that the lack of the fence meant that the rear of the subject Property and its neighbours were completely open to the playing fields to the south.
16. The Tribunal cannot identify any prejudice (as defined by *Daejan*) that the Respondent may suffer as a result of the failure to consult, nor has the Respondent made any submissions to that effect.
17. Accordingly, the Tribunal determines that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the Act. The requested dispensation is, therefore, granted.
18. Parties should note that this determination does not prevent any later challenge by any of the Respondent leaseholders under sections 19 and 27(A) of the Act on

the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.

Appeal

19. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD