



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

Case Reference	: CHI/29UL/LDC/2021/0110/AW
Property	: 1 The Field, Rectory Lane, Saltwood, Kent CT21 4QA
Applicant	: Northumberland & Durham Property Trust Limited
Representative	: Town & City Management Limited
Respondents	: Ms Sarah Berry Flat 1 Mountview Estates PLC (Flat 4)
Representative	: Gary Mead BSc (Hons) MRICS (for Ms Berry)
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(s)	: D Banfield FRICS Regional Surveyor
Date of Decision	: 5 January 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the substitution of Darren Farrell Roofing for John Williams & Co.

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

Background

1. The Applicant landlord seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed by Section 20 of the Act.
2. The Applicant explains that following a section 20 consultation process a contractor was selected to carry out roof repairs to remedy water ingress into the top floor flat. However, that contractor was unable to confirm a start date, and as a result a new contractor (who did not tender in the section 20 process) has been instructed to carry out the works, which have begun. The Applicant states that due to increases in material costs and extra work being required due to expanding foam having been applied under the roof tiles by persons unknown, for which there will be an additional cost of £1200.00.
3. Attached to the application was a copy of a Notice of Intention dated 9 June 2020, a Notice of Estimates dated 11 February 2021 with JD Williams as the lowest tenderer at £26,114.88 inc VAT, A letter to Ms Berry advising that Darren Farrell Roofing had been appointed and that works would start on 8 November 2021.
4. The Tribunal made Directions on 17 November 2021 indicating that the Tribunal 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 in writing to the Tribunal. No objections have been received.
5. The Tribunal sent to the Lessee 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 and Tribunal.
6. Replies were received from both Lessees, Mountview agreed with the application and an objection was received on behalf of Ms Berry.
7. 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 issues have been clearly identified in the written submissions.
8. 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

9. 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.

10. 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

- 11. An objection was received from Gary Mead BSc (Hons) MRICS on behalf of Ms Berry. In a lengthy submission Mr Mead explained that;
 - A Notice of Intention was served on 9 June 2020 and a Statement of Estimates on 5 October 2020 later revised on 11 February 2021.
 - Discussions were held with the lowest tenderer, John Williams & Co regarding the scope of works following which further quotations were received on 15 April 2021 for £4,776.00 plus VAT for works to the main roof and right hand valley and £1,759.00 plus VAT for works to the rear chimney stack.
 - An “Ad Hoc Charge” was then raised on 23 April 2021 which has been paid under protest.
 - After John Williams quote was accepted by Hallas Co Chartered Surveyors Ms McGill of Town City Management (T&C) advised that the contract had been awarded to Darren Farrell Roofing and John Williams should be dis-instructed.
 - On enquiring of Ms McGill it was explained that John Williams had been unable to provide an acceptable start date and due to the deteriorating condition of the top floor flat an alternative roofer was approached.
 - Ms McGill also said that costs had risen due to the national increase in materials and additional works were required due to someone taking it upon themselves to insert expanding foam under the roofing tiles which had not been present when they or Hallas & Co had last visited.

- Ms McGill wrote on 5 November 2021 stating that they had applied for dispensation “on the additional costs of £1,200 only”
12. A detailed account of the issues that arose during the conduct of the works was then given which it is unnecessary for me to recite. Mr Mead concludes that Ms Berry was disadvantaged by;
- A second quotation not being sought following the revised scope of works produced in April 2021
 - Concern over the competence of Darren Farrell Roofing supported by Mr Hentschel and the unacceptable standard of works undertaken to date
 - Bellerphon Roofing and Property Maintenance Ltd, who have been maintaining the property on behalf of T&C confirmed that their invoice dated 17 July 2020 refers to carrying out temporary roof repairs and that T&C were aware of the use of foam. As such any additional costs should not be passed on to the lessees.
 - Demands being made not in accordance with the lease.
 - T&C’s failure to make provision for the repairs to enable the Freeholder to fund the cost pending a re-charge to the lessees in accordance with the terms of the lease.
13. A response from T&C dated 10 December 2021 stated that;
- Leaseholders have been advised that the contractor who won the tender was unable to complete the repairs in a timely fashion
 - The occupant of the top floor flat was experiencing severe water ingress which could not be allowed to continue through the winter.
 - The use of expanding foam had increased the costs
 - The conduct of the work is not relevant and following a meeting on 30 November the work is in the process of completion.

Decision

14. 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.
15. Mr Mead refers to the manner in which the contract has been conducted and how funds have been demanded. Neither of these is relevant to the application before me which is solely whether dispensation should be granted.

16. In determining an application for dispensation, the only issues for the Tribunal is to decide whether the landlord's actions would have been different if consultation with the lessees had been carried out.
17. Although reference has been to changes made to the scope of works and a revised quotation from John Williams I must remind myself that the application only refers to the Notice of Estimates dated 11 February 2021 and whether it was reasonable to substitute Darren Farrell Roofing for John Williams & Co.
18. The application also refers to the additional cost incurred due to an increase in rates and extra work required due to the presence of expanding foam.
19. I accept that given the need to prevent further water ingress into the top flat it was necessary to ensure the works were carried out without unnecessary delay. The applicant says that John Williams was unavailable to start quickly enough and no evidence has been produced that suggests this was not the case.
20. I therefore determine that it was a reasonable decision to instruct an alternative contractor.
21. With regard to the issue of extra costs this is not a matter requiring dispensation. Any extra work relating to the presence of foam is included within the general description of the works contained in the Notice of Intention and all issues relating to costs are a matter for an application under S.27A of the Landlord and Tenant Act 1985.
22. No evidence of the type of prejudice referred to in the Daejan case referred to above has therefore been submitted and I am not satisfied that if consultation had taken place there would have been a different outcome.
23. On the evidence before me therefore I am not persuaded that the Respondents have been prejudiced by the lack of consultation and as such am prepared to grant the dispensation sought.
24. 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 substitution of Darren Farrell Roofing for John Williams & Co.**

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

D Banfield FRICS
5 January 2022

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.