



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

Case Reference : CHI/00HN/LDC/2021/0102/AW

Property : The Gatehouse, 472 Holdenhurst Road,
Bournemouth, Dorset BH8 9AQ

Applicant : Maxi Investments Limited

Representative : Burns Hamilton

Respondent : The three lessees

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(s) : Judge J Dobson

Date of Directions : 8th December 2021

DECISION

Summary of the Decision

1. **The Applicant is granted 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 in respect of major works, being works to investigate the extent of structural issues with the Property and the temporary support works required to keep the building safe. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The application and the history of the case

2. The Applicant applied by application dated 27th October 2021 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act.
3. The Tribunal gave Directions on 8th November 2021, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
4. The Directions further stated that Tribunal would determine the application on the papers received. Having considered the application the Tribunal was satisfied that is appropriate.
5. This the Decision made on that basis and following a paper determination.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”
12. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
13. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
14. If dispensation is granted, that may be on terms.

Consideration

15. It is said in the application that the Property, consists of a two storey (ground and first floor) converted block containing 3 residential flats. It is further said that Flat A's bedroom is situated over what is described as an old carriage way and it is this area of the building which requires structural repairs.
16. The Applicant explains that’s structural issues have been identified which require immediate rectification” Dispensation is required for the “Investigation of extent of structural issues and temporary support works to keep the building safe” It is said that “Our client intends to follow S20 procedure when a full specification can be produced by the surveyor”. A copy of a Notice of Intention dated 20 September 2021 has been provided in respect of the replacement of a structural steel. The dispensation sought relates to that investigation work.

17. All three leases of flats within the Property have been provided with the application (“the Lease”). In the absence of any submission that the terms of the three leases differ in any material manner, the Tribunal has considered the lease for 472A dated 25th March 1987. The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms.
18. The Lessor’s obligations are set out principally in the Fourth Schedule, including paragraph 3 of that Schedule, which requires the Lessor to “maintain repair and renew the main structure and in particular the main walls foundations roof chimney stacks gutters and rainwater pipes”. The flat enjoys a right to support, provided for in the First Schedule.
19. Accordingly, the structural issues fall within the responsibility of the Applicant.
20. The Applicant has also provided a photograph of the Property, a survey report from John Holt Associates Limited, trading as Watts Holt, surveyors and a section 20 Notice of Intention (although not including addressee details).
21. There has been no response from any of the Lessees opposing the application. Indeed, the two (of three) Lessees who have responded have agreed to the application.
22. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
23. Accordingly, the Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
24. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building.
25. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are reasonable or payable. If a Lessee wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1968 would have to be made.

ANNEX - RIGHTS OF APPEAL

- 1) A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
- 2) 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.
- 3) The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
- 4) Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.