FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HB/LDC/2022/0062/AW
Property	:	William Court, Overhill Road, Downend, South Gloucestershire, BS16 5FL
Applicant	:	McCarthy & Stone Retirement Lifestyles Ltd
Representative	:	McCarthy & Stone Management Services
Respondent	:	
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 members	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	30 August 2022

DECISION

The Tribunal grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the carpet to the first floor.

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 1985 Act. The application was received on 20 June 2022.

2. The property is described as a purpose- built block of flats comprising of one and two bedroom apartments, age-restricted community for the over sixties.

3. The Applicant states that "Due to an anonymous leak of a liquid/oil across the ground floor and the 2nd floor, the carpet replacement works had to be carried out urgently after the carpet cleaner failed to wash it off after several trials, the house manager applied for an insurance claim that covered the ground floor and the second floor carpet replacement. As the ground and second floor carpets were being replaced it made sense for us to replace the first- floor carpet at the same time so that the development décor remained to the same specification".

4. A date was scheduled for the full development carpet replacement following the insurance claim however only a notice of intention to carry out works to leaseholders regarding the replacement of the first- floor carpet was issued.

5. The total cost for the 1st floor carpet replacement is given as £9,516.00 including VAT.

6. The Tribunal made Directions on 1 and 18 July 2022 indicating that it 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.

7. The Tribunal required the Applicant to send its Directions to the parties together with 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. On 21 July 2022 the Applicant confirmed that the Tribunal's Directions had been served as required.

8. No lessees responded and in accordance with the above, the lessees are therefore removed as Respondents.

9. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.

10. 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 application remained unchallenged.

The Law

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;

    a. 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.

    b. 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.

    c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

    d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

    e. 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).

    f. 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.

    g. 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.

h. 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.

i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

13. The Applicant's case is set out in paragraphs 2 to 5 above.

Determination

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. I accept that whilst the carpets to the ground and second floors were being replaced it made sense to include the first floor at the same time however the issue I must consider is whether, by not being consulted as required by S.20, the Lessees have suffered prejudice. No objections have been received and no evidence of prejudice has been provided.

16. The Tribunal therefore grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the carpet to the first floor.

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

18. The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.

D Banfield FRICS
30 August 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.