



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

Case Reference : CHI/00MR/LDC/2023/0012

Property : 16 Waverley Road, Southsea, Hampshire
PO5 2PW

Applicant : AEL Properties (SOUTHERN) Ltd

Representative : Dack Property Management

Respondents : Mr M J Cooper (Flat 1)
Ms H K Chamberlain (Flat 2)
Dr M D & Mr G J Harper (Flat 3)
Mrs S Ganeva (Flat 4)

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 Tildesley OBE

**Date and Venue of
Hearing** : Determination on Papers

Date of Decision : 28 February 2023

DECISION

The Application

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 made on 30 January 2023
2. The property is described as a converted Victorian building , divided into four flats. The building is formed of facing masonry elevations under a pitched and tiled roof. The property has cavity brick walls.
3. The Applicant explained that Mr Dann Butt FRICS carried out a survey of the property on 10 January 2023 and reported that the property has suffered from catastrophic cavity wall tie failure, and as a result, the cavity wall ties need replacing lower down the building and the gable end wall from around three courses below eaves to the pitched roof ridge height requires rebuilding urgently.
4. The Applicant issued a Stage 1 Notice of Intention on 18 January 2023 but only gave the leaseholders 14 days in which to respond. On 13 February 2023 the Applicant supplied the leaseholders with the outcome of a competitive tendering exercise in which five contractors were approached with only two providing quotations: £31,681,20 and £32,083.20. The Applicant has chosen the contractor with the lowest quotation. The Applicant stated that the total anticipated costs of the works are £36,121.20. The Applicant informed the leaseholders:

“Normally you would now be entitled to a consultation period of one month, however as our previous correspondence detailed due to the urgent nature of the works, we have made an application to the First Tier Tribunal in order to circumvent the necessity for a full consultation. Therefore, in this instance we will be proceeding with the lowest quote, received from Hawke Property Services. Full regard will still be given to any observations received no later than 20 February 2023, with a full response being provided in return no later than 24 February 2023. To facilitate any possible queries you may have, also enclosed is a copy of the specification against which the contractors approached have quoted”.

5. The Applicant sought dispensation from the statutory consultation requirements, particularly the time limits allowed for the leaseholders to respond because of the urgency of the repairs to render the gable end wall secure and to prevent a collapse of the building.
6. On 8 February 2023 the Tribunal directed the application to be heard on the papers unless a party objected within seven days. Further the Applicant was required to serve the application and directions on the Respondents. On 9 February 2023 the Applicant confirmed that it had provided the Respondents with the application and directions. The Applicant also confirmed that the Respondents had received the specification for the works.

7. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 20 February 2023 indicating whether they agreed or disagreed with the Application. The Tribunal received no completed forms from the leaseholders.
8. The Tribunal also directed the Applicant to confirm to the Tribunal by 22 February 2023 that no objections have been received from the leaseholders. On 21 February 2023 the Applicant confirmed that no objections had been received.

Determination

9. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
10. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
11. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
12. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.

13. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
14. The Tribunal now turns to the facts. The Tribunal is satisfied that the repairs to the gable end of the property and the associated works to the roof are urgent to prevent the collapse of the building . The Tribunal accepts that if the Applicant had to embark on the full statutory consultation process it would add unnecessary delay to the carrying out of the works, and put the structural integrity of the building at high risk. The Tribunal is satisfied that the Applicant has undertaken a competitive tendering exercise to choose the contractor which gives assurance to the leaseholders that the costs of the works are within the bounds of reasonableness. The Applicant has also kept the leaseholders informed of the proposed works and likely costs and given them an opportunity to comment. The Tribunal takes into account that no leaseholder has objected to the Application.
15. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

16. **The Tribunal grants an order dispensing with the consultation requirements in respect of the urgent repairs required to the gable end wall including the roof.**
17. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

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.