



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

Case Reference : CHI/00HN/LDC/2023/0008/AW

Property : 53 & 53A Anstey Road, Kinson,
Bournemouth BH11 9HH

Applicant : BCP Council

Representative :

Respondents : Ms J Yates (No 53)
Mr W & Mrs N Proctor (No 53A)

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 : 21 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 received on 23 January 2023.
2. The property is described as two flats arranged as a one up and one down.
3. The Applicant explained that the chimney weather proofing at 53 Anstey Road had failed and water was entering the property. Works were required as a matter of urgency to prevent the water ingress. According to the Applicant the best course of action was to remove the chimney (pending confirmation that it was not in use) and re-tile that area of roof. The majority of the cost would be in erecting scaffolding. The Applicant added that the roofer had attended the site and would have more information on which elements of the roof/chimney have failed and on the appropriate action to maintain a weather-tight roof. Due to the likelihood that the weather would soon change for the worse, the Applicant considered the repair urgent and would look to start work as soon as possible.
4. The Applicant sought dispensation on the grounds of the urgency of the matter and of avoiding further damage to the leaseholders' property. The Applicant added that the works could be carried out by its in house team which would overcome the delays of sourcing roofing contractors which were in high demand due to the volume of roof damage occasioned by recent stormy weather.
5. On 1 February 2023 the Tribunal directed the Applicant to serve the application and directions on the Respondents. On 3 February 2023 Applicant confirmed that it had provided the Respondents with the application and directions. The Applicant also confirmed that it had provided the Respondents with the specification and the quotation for the job.
6. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 10 February 2023 indicating whether they agreed or disagreed with the Application. The Tribunal received one form completed by Nicola Procter of Flat 53A. Ms Procter indicated her agreement to the Application.
7. The Tribunal also directed the Applicant to confirm to the Tribunal by 14 February 2023 that no objections have been received from the leaseholders. On 15 February 2023 the Applicant confirmed that it had received no objections.

Determination

8. 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.
9. 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.
10. 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.
11. 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”.
12. 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.
13. The Tribunal now turns to the facts. The Tribunal is satisfied that the works to the chimney stack were urgent to prevent further water

ingress and damage to the flats. 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. The Applicant is using its in-house team to undertake the works which should ensure that the costs are kept to a reasonable level. The Applicant has also provided the leaseholders with a copy of the specification and the quote for the works. The Tribunal takes into account that no leaseholder had objected to the Application.

14. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

15. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works to remedy the ingress of water occasioned by the disrepair to the chimney.**
16. 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.