



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/43UE/LDC/2022/0111

Property : Flats 11-15 Galsworthy House, 7 – 8 New Parade, Dorking, RH4 1RE

Applicant : Balandra Securities Ltd

Representative : Robinsons

Respondents : Mojahid Ali (Flat 11)
Angelika C J Friebe (Flat 12)
Mr A P & Mrs L D Shipton (Flat 13)
Chris Horley (Flat 14)
Chris J Merriman (Flat 15)

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 : 25 January 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 16 December 2022.
2. The property has a commercial ground floor restaurant with five purpose built two to three bedroom flats on the first and second floors accessed via a common staircase.
3. The Applicant explained that dispensation was sought in respect of urgent works to remedy significant water ingress into the flats of two leaseholders. The Applicant stated that it was not able to identify the cause of the water ingress until scaffolding had been erected. As soon as the cause was identified they would carry out the works. The Applicant said that to date there had been no consultation with leaseholders but would be notifying them of the current situation in writing.
4. On 30 December 2022 the Tribunal directed the Applicant to serve the application and directions on the Respondents, which the Applicant confirmed that it had done so on 6 January 2023. The Applicant also indicated that they had now served the Respondents with all the relevant quotations and specifications for the works at this stage.
5. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 16 January 2023 indicating whether they agreed or disagreed with the Application. No Respondent has returned the pro-forma.

Determination

6. 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.
7. 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.

8. 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.
9. 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”.
10. 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.
11. The Tribunal now turns to the facts. The Tribunal is satisfied that it is necessary to carry out the works as an urgent measure to stop the significant water ingress into the flats of the two leaseholders. The Tribunal holds that the Applicant could not wait to undertake a full consultation exercise before it carried out the works. The Tribunal observes that no leaseholders have objected to the Application.
12. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

13. The Tribunal grants an order dispensing with the consultation requirements in respect of the works to remedy the substantial water ingress in the flats of the two leaseholders.

14. 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.