FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HX/LDC/2023/0014
Property	:	55-71 (odd) Phoebe Way, Chapel Grange, Oakhurst, Wiltshire, SN25 2JQ
Applicant	:	Maple (328) Limited
Representative	:	Remus Management Limited
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 member	:	D Banfield FRICS, Regional Surveyor
Date of Decision	:	26 April 2023

DIRECTIONS

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to make safe a disconnected soil stack and its subsequent reinstatement.

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

The Applicant will send a copy of this decision to each lessee

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 by email on 1 February 2023.

2. The Applicant describes the property as "*Flat 69 is a top floor flat in purpose-built block of 8 flats.*"

3. The Applicant explains that the application is urgent as "*Soil stack has disconnected presenting a health and safety risk to all residents of the block.*"

   And further

   "*The contractor will be erecting (sic) the scaffolding (sic) and fit vent tiles to the roof above the soil stack, the soil stack will then be connected to ensure the gas in being removed from the building (sic) and replacing the membrane above the vent that is now contaminated.*

   We have be liaising (sic) directly with the letting agent and tenant and directors of the management company (sic) directly and I have issued a notice of intention

   Seeking dispensation due to the soil stack being removed away from the roof and is now allowing toxic gas to circulate above the property of a flat. And (sic) is causing a potential risk to residents of the block."

4. The Tribunal made Directions on 16 March 2023 setting out a timetable for the disposal. The Tribunal required the Applicant to send them 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 although they would remain bound by the Tribunal's Decision.

5. On 30 March 2023 the Applicant confirmed that the Tribunal's directions had been sent to the Lessees. The Tribunal received 10 responses all of which were in favour of the application.

6. 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.

7. Following an examination of the papers by a procedural judge it became apparent that although the application referred to a single flat (No 69) the dispensation sought would be binding on all of the

service charge payers within the blocks in accordance with the terms of the Fifth Schedule to the lease. The application is therefore amended to include all 9 flats within the block.

8. 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

9. 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.

10. 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

11. The Applicant’s case is set out in paragraph 3 above.

Determination

12. 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.

13. Clearly making safe a disconnected soil stack and its subsequent reinstatement is a matter of some urgency that should not be unduly delayed by following the full S.20 consultation procedures. In this case no prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant the dispensation required.

14. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to make safe a disconnected soil stack and its subsequent reinstatement.

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

16. The Applicant will send a copy of this decision to each lessee.

D Banfield FRICS
26 April 2023

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.