



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

Case Reference	:	CHI/45UC/LDC/2023/0045
Property	:	Pagham Court, 262 Hawthorn Road, Aldwick, Bognor Regis, PO21 2UP
Applicant	:	McCarthy & Stone Retirement Lifestyles Ltd
Representative	:	
Respondent	:	Mr & Mrs Hurdle
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	:	6 June 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of carpets at Pagham Court.

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

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 12 April 2023.
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 explains that “*The homeowners at Pagham Court requested new carpeting for the communal areas to be replaced due to wear & tear. Our consultants Edmund Shipway were assigned to manage the project. After surveying the development, the specification was agreed and an N1 issued on 19 February 2022, with expiry 19 March 2022.*

Edmund Shipway sent out the spec to contractors to tender for the works. After repeated attempts, to date only one compliant tender has been received. This has prohibited McCarthy & Stone Retirement Lifestyles Limited from progressing through to Notice of Estimates of the Section 20 process.

Homeowners have become frustrated that due to the requirement of 3 compliant tenders for the works the project has been delayed for so long.

They recently met with the contractor, English County, who supplied the one compliant tender and have indicated that they wish to move forward with them. For this reason we seek dispensation from the Section 20 process.

Homeowners will be relieved that the project can finally go ahead.”

4. The Tribunal made Directions on 17 April 2023 setting out a timetable for the determination of the Application and inviting the Respondents to indicate whether they agreed to the proposal and whether they objected to the Tribunal making its determination on the papers rather than an oral hearing.
5. Nineteen responses were received eighteen of which were in agreement with the proposals.
6. Mr & Mrs Hurdle of Flat 10 opposed the application and indicated that they objected to the matter being determined without an oral hearing.
7. In a letter dated 23 May 2023 Mr & Mrs Hurdle indicated that their request for an oral hearing was made in error although their

objection was maintained. In these changed circumstances the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.

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 paragraphs 2 and 3 above.
- 12. Mr and Mrs Hurdle’s objection is that;
 - A written specification has not been issued to residents of Pagham Court for the flooring works planned which is essential guidance for the contract quote and contract installation.
 - Dispensation from the “consultation process” could leave residents with “no protection” from additional costs if contract has problems which is unacceptable and expensive.
- 13. In a response from the Applicants dated 31 May 2023 it is stated that;
 - **Written specification** – Due to the age of the Pagham Court development, the original flooring specification had been discontinued. Our project consultant Edmond Shipway issued a benchmark of standard rates to the suppliers selected for the tender process on 17th November 2022, and met with the House Manager on-site in January 2023 to discuss a proposed specification within the budgeted parameters. The House Manager advised the project consultant that she had met with homeowners on 11th April 2023 to agree the final specification, which she confirmed on 12th April 2023 by email. The written specification is available via your House Manager on request.
 - **Protection after work is complete** – All works project managed by Edmond Shipway have a six-month warranty to ensure that any snagging issues are captured and resolved. It is very important to us that works are completed correctly and to a high quality, and we will always endeavour to ensure this is the case.

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. The objection received is that no written specification has been received by residents and they may face additional costs if problems arise.
16. In response the Applicant refers to tendering for the work which produced only one quotation, agreeing the specification with homeowners and the availability of the specification. No objections have been received. No prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant the dispensation required.
17. The consultation process in essence gives warning to service charge payers that works are envisaged, permits them to comment on those works, nominate a contractor from whom a quotation must be sought and receive an explanation if the lowest quotation is not accepted.
18. In considering the objections it seems that a specification was agreed with homeowners and competitive tenders sought. Residents may have not had the opportunity to nominate a contractor but there is no suggestion that this has caused them disadvantage. Any contract, whether awarded after consultation or not may run into difficulties however there is no indication that this likelihood is exacerbated by the failure to consult. If there is such an occurrence the costs can be challenged by an application under S.27A of the Landlord and Tenant Act 1985.
19. The Tribunal is not therefore satisfied that the Lessees have suffered the type of prejudice referred to in the Daejan case and as such grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of carpets at Pagham Court.
20. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
21. The Tribunal will send a copy of this decision to Mr and Mrs Hurdle.

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.