



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

Case Reference : CHI/43UF/LDC/2023/0143

Property : Castle Place, Castle Square, Bletchingley
RH1 4LB

Applicant : Mr Gary Pickard

Representative : Dean Wilson llp
clw@deanwilson.co.uk

Respondent : Apartment 1
Mr Franciscus Schrijver and Mr William
Fabre
Apartment 2
Mr Paul and Mrs Judy Cove
Apartment 3
Mrs Anne Bradley-Smith
Acting by her power of attorneys
Apartment 4
Mr William and Mrs Sharon Sheldon
Apartment 5
Ms Rachel McHugh
Apartment 6
Mr Stephen Pamenter

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 : Regional Surveyor Gater

Date of Decision : 15th November 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to the heating system as described in the application.

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

The Applicant is to send a copy of this determination to all of the leaseholders liable to contribute to service charges.

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.
2. The Applicant explains that the heating and hot water system which serves the Property and all 6 flats within the same failed on or about 2nd or 3rd November 2023. Previously a first stage consultation notice was served on 12th April 2023. This suggested that the boilers and the like required replacing. A second stage notice was served on 6th November 2023.
3. On 8th November 2023 at 15.07 an application for dispensation was sent to the Tribunal. This explained that Mr Pickard, a Tribunal Appointed Manager sought dispensation. He intends to proceed with the cheapest quotation for replacement which amounts to £7,851.52 provided by Saunders Special Services Limited. Copies of this were supplied and the two notices with the application.
4. Following receipt of the application the leaseholders of Flats 1 ,2, 4 and 5 have all confirmed they agree that dispensation should be granted. Agreement for flat 3 has also been confirmed through power of attorney.
5. The Tribunal recorded in earlier directions that the leaseholder of Flat 1 Mr Shrijver, does not agree the proposed apportionment of the costs but that is a separate issue, as he acknowledges.

6. Mr Paminter of Flat 6 has not responded to the Tribunal directions and has not submitted a response form.
7. In view of the urgency of the matter the Tribunal directed on 10 November that the matter be heard at a hearing which took place by video hearing on 14 November 2023 .
8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

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* [2013] UKSC 14. In summary the Supreme Court noted the following.
 - i. 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.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

- v. 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).
- vi. 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.
- vii. 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.
- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

The Hearing

- 11. At the hearing the Applicant was present and represented by Ms Claire Whiteman of Dean Wilson llp.
- 12. Mrs Judy Cove, Ms Rachel McHugh and Mr William Sheldon were present as Respondents.
- 13. Mr Marcus Pelho attended as a spokesman for Mr Schrijver of Flat 1. The Tribunal noted that no written authority had been received appointing Mr Pelho. In the interests of its overriding objective, and given the urgency of the case, the Tribunal accepts Mr Pelho as spokesman for Mr Schrijver.
- 14. The Tribunal is grateful to Ms Whiteman, the Applicant and Respondents for their part in the proceedings which have been convened at short notice.

Evidence

- 15. **The Applicant's case** is set out in the application.

16. At the hearing, Ms Whiteman added that whilst Stage 1 of the consultation had been completed last April, there were no funds to cover the cost and that the matter was put on hold.
17. On 3 November 2023 the boilers failed, and an accelerated Stage 2 consultation was initiated. Quotes were obtained and the contractor with the lowest price has confirmed that they are ready to proceed.
18. Ms Whiteman said that there were health concerns in not proceeding with the works. She cited in particular the health of Mrs Bradley Smith who has dementia and is vulnerable.
19. The Applicant considered that as Tribunal Appointed Manager he would need to apply for a dispensation before commencing the works.
20. During the second stage consultation Mrs Cove asked for an additional contractor to be given the opportunity to quote. This was obtained but was above the lowest quote.
21. Mrs Cove and Mr Sheldon also asked for alternative heat sources to be considered. In response the Applicant consulted Saunders Special Services who advised that an alternative heat source would not be practical here. They also confirmed that whilst one boiler was possibly capable of repair, it was cheaper overall to replace both at the same time.
22. Questioned by the Tribunal, the Applicant said that Mr Paminter had made informal statements that the works were not necessary, but no formal response has been received from him. In response to those comments the Applicant obtained confirmation from Saunders Special Services that the works were indeed necessary.
23. Mr Pelho asked details of the guarantees for the existing and proposed boilers. The Applicant answered that the existing system is some 13-14 years old but imagined that the new system would have a one year guarantee.
24. The Tribunal questioned the correspondence regarding the return of £3143.70 on 9 November 2023 transferred from Mr Schrijver but immediately returned. Mr Schrijver had said that in view of the urgency of the matter and the health of Mrs Bradley Smith, he wish to make this contribution.
25. The Applicant said that he wished to avoid prejudicing another matter regarding arrears transferred to the Tribunal from the County Court.
26. The Applicant went on to say that three other residents had paid in a total of a total of £11,000.
27. Mr Pelho, spokesman for Mr Schrijver said that he wished to pay in the money as soon as possible.

28. In summing up Ms Whiteman stated that the Applicant had obtained quotes and selected the lowest bidder who is ready to proceed. It would be prejudicial to the Respondents not to have dispensation granted.
29. **The Respondents** commendably showed concern for their elderly neighbour, Mrs Bradley Smith.
30. Ms McHugh said the situation was deeply unpleasant. She was having to use electric heaters and travel to a friend's home to shower.
31. Mrs Cove said that to have to wash in a bucket was unfair.
32. Mr Sheldon highlighted the specific health concerns for Mrs Bradley Smith.
33. The parties confirmed that they had had an opportunity to contribute fully to the proceedings.

Determination

34. 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.
35. A 20ZA determination is concerned with whether the Tribunal may grant dispensation from consulting the relevant parties. The test laid down by the Supreme Court is whether they are prejudiced by the absence of consultation.
36. The Respondent's submissions centre on the poor conditions prevailing without the works being carried out. Five of the Respondents formally support the application. There has been no evidence that they would be prejudiced by the grant of dispensation.
37. The Tribunal finds that the works required to the heating system are urgent and that whilst some of the consultation process has been followed, it has not been possible to operate the full statutory consultation.
38. The Tribunal is satisfied the Respondents would not be prejudiced by the grant of dispensation.
39. For this reason, the Tribunal grants the requested dispensation.
40. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
41. The Applicant, Mr Pickard has chosen to seek dispensation despite the urgency and being in funds, stating that as Tribunal Appointed Manager he would need to do so before proceeding. The Tribunal points out that

there is no requirement for this to happen and that he was at liberty to continue with the works and seek retrospective dispensation. The Tribunal can see no reason why funds should not be accepted from Mr Schrijver.

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.