



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

Case Reference : CHI/00HP/LDC/2023/0104

Property : 8 & 8A Park Lake Road Poole

Applicant : Patricia Harrison

Representative :

Respondent : Christine Roberts

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 : 12 December 2023

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the removal of the front and rear chimneys and repointing.

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.
2. The Applicant explains that the Property is a semi-detached Edwardian house divided into two residential flats. The Applicant is the freeholder. The Applicant seeks dispensation from the consultation requirements for works already carried out to remove two chimneys at the Property. The front chimney was removed because it was deemed to be unsafe and the back chimney was removed following receipt of an enforcement notice received from Bournemouth and Poole Council. The Applicant also seeks dispensation from the consultation requirements in respect of certain works of repointing carried out at the Property. The Applicant says that informal consultation was carried out with the Respondent but that a mistake was made in the consultation process.
3. The Tribunal made Directions on 12 September 2023 setting out a timetable for the disposal of the case which it sent to the parties. Attached was a form for the Respondent to indicate to the Tribunal whether she agreed with or opposed the application and whether she requested an oral hearing. If the Leaseholder agreed with the application or failed to return the form she would be removed as a Respondent although remaining bound by the Tribunal's Decision. Further directions were made on 7 November permitting the inclusion by the Applicant of video evidence.
4. The Respondent objected to the application details of which together with the Applicant's response are included in the determination bundle. 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.
5. 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 sufficient without the need for oral evidence.

The Law

6. 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.

7. 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

8. The Tribunal has a bundle comprising 154 pages containing submissions and evidence from both parties. Reference to the page numbers within the bundle are shown as [*].
9. The Tribunal has read the entirety of the bundle however the contents refer to matters not relevant to an application for

dispensation of consultation requirements and as such will not be referred to.

10. As indicated in the Tribunal's Directions the only issue for consideration is whether by failing to follow the procedures required by S.20 of the Landlord and Tenant Act 1985 the Respondent has been prejudiced.
11. The Tribunal will not therefore be considering whether the works have resulted in a loss of value to the Respondent's flat and whether the cost of those works is reasonable or capable of recovery through the service charge.
12. The Applicant's case is referred to at paragraph 2 above.
13. In her Statement of Case [87] the Respondent says that;
 - The upper and lower stack of the rear chimney was demolished in July 2022. She agreed to the demolition but was unaware of amount of work or their cost
 - The shared upper stack and lower stack of the Applicant's chimney breast was demolished on 12 April 2022 without her consent or S.20 consultation
 - Pointing work started on 20 April 2022 and she was sent a S.20 Notice on 28 April 2022
 - She lost the use of two front fireplaces
 - Not all the works were urgent or necessary and if consulted she would have assisted in finding a more cost effective way to carry out the works
 - It is accepted that the works to the rear chimney were urgent but didn't receive sufficient information. It has not been reinstated
 - The Thorne report [107] refers to the repair and maintenance of the rear stack, not its removal
 - In the Smith Robinson Higley Ltd report dated 19 July 2021 [118] reference is made to the leadwork to the front stack having been recently renewed.
 - Photos show damp around rear chimney but not front [124]
 - Repair would have been considerably cheaper than full demolition
 - No evidence provided that repair would be more costly as stated by Applicant
 - S20 Notice for pointing was sent after the work started and subsequently discovered quote did not include her rear wall which she has had to pay for herself
 - Her views were ignored by the Applicant and the work was carried out partly to assist the plans to convert the flat for holiday lets

- In an email from the Applicant dated 26 April 2022 she admitted not following the S.20 procedure and offered to forego the statutory £250 [127]
- Conservation specialist expressed concerns and how further investigation was necessary. [146]
- The delay of 18months in seeking dispensation is unacceptable
- If she had been consulted greater time could have been given to considering the estimates and alternative quotations obtained.
- She would have asked for further expert evidence as to whether full demolition was required
- She seeks the costs incurred as a result of defending the application

14. In response the Applicant said that [19];

- The rear chimney was removed following a dangerous structure notice required the chimney to be reduced to ceiling level and the roof made good
- Two quotes were provided to the Respondent on 7 May 2022
- Considerable consultation with Respondent took place and Party Wall Awards signed by the Respondent but not concluded for various reasons
- B E Willis found the rear chimney to be in a state of structural collapse
- Umbrella Improvements found the front chimney at risk and the Respondent was made aware
- Thorne Chartered Surveyors observed daylight and missing bricks which could allow gases into the roof space
- Photos were taken and shared with the Respondent
- Thornes said that both front and rear chimneys were in similar condition and BCP would have issued a Notice
- The Respondent did not object to the removal of the flues and on 21 February 2022 said that they were not used
- Three quotes were obtained for pointing and the Respondent's contractor appointed
- Costs of rebuilding the stacks was investigated and shared with the Respondent on 5 July 2022 who stated that they would not contribute

Determination

15. 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.
16. In order to determine whether the lack of consultation has prejudiced the Respondent as referred to in the *Daejan* case it is

first necessary to examine the rights given to a lessee by the S.20 consultation process.

17. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the 2003 Regulations. I have abbreviated a summary of those requirements as follows:
 - Stage 1: Notice of intention to do the works Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.
 - Stage 2: Estimates The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.
 - Stage 3: Notices about Estimates The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.
 - Stage 4: Notification of reasons Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.
18. As indicated in the Tribunal's directions this determination is not in respect of the eventual cost of the work, whether it is recoverable through the service charge or otherwise payable it is solely whether if consultation had been carried out would the outcome have been different?
19. Whether the issues were urgent or not is not a factor in deciding if dispensation should be granted unless additional costs are incurred due to the inability to obtain competitive quotations.
20. In this case competitive quotations were obtained for works to the rear chimney and only the Respondent's right to nominate a contractor has been lost. From the evidence it seems that the works to the front chimney were carried out by the Applicant's builder without obtaining any alternative quotation. The pointing works were conducted by the Respondent's nominated builder.

21. The Respondent says that given more time further investigations could have been carried out as to whether repair or rebuilding of the chimneys was preferable. Whilst that may have been the case the issue for the Tribunal is whether given such additional time would the Applicant proceeded on a different scheme and that would seem unlikely given the disrepair to both chimneys identified by the consultants.
22. Given the above, the Tribunal is not satisfied that the Respondent has suffered the type of prejudice referred to in the Daejan case.
23. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the removal of the front and rear chimneys and repointing.**
24. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
25. The Tribunal will send a copy of this determination to the lessees.

D Banfield FRICS
12 December 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.