



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

Case reference : **CHI/43UK/LDC/2016/0007**

Property : **8-18 Chaldon Road & 7-14 Raglan
Court, Town End, Caterham,
Surrey CR3 5UG**

Applicant : **Raglan (Caterham) Limited**

**Applicant's
Representative** : **Property Partners**

Respondents : **The Lessees**

Tribunal member : **Mr D Banfield FRICS**

Date of Decision : **17 March 2016**

Summary of decision

**The Tribunal grants dispensation from the consultation requirements
of S.20 Landlord and Tenant Act 1985.**

**The Tribunal makes no findings as to whether the sum is in due
course payable or reasonable**

Background

1. This is an application for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985. (the Act)
2. The Applicant advises that deteriorating asbestos containing fascia panels need to be removed as a matter of urgency.
3. The Applicant's H&S consultant has tendered the works to qualified contractors and it is intended to proceed with a quotation of £16,800 + VAT.
4. Directions were made by the Tribunal on 28 January 2016 as to the conduct of the case. In accordance with those Directions, on 4 February 2016 the Applicant wrote to each of the leaseholders enclosing a copy of the asbestos survey, the Directions and a form to be returned to the Tribunal indicating whether the proposal was supported or not and whether an oral hearing was required.
5. No forms objecting to the proposals have been received from the Lessees and the matter is therefore determined on the basis of the written representations received,
6. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

7. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1)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.

8. 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
 - The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

- 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.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- 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).
- 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.
- 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.
- 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.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Submissions

9. The history of this matter is set out above. No further submissions have been received from the Applicant and no responses have been received from the Lessees.

Decision

10. The Application clearly sets out the urgency in this matter. The Lessees have been made aware of the situation and none have objected to the works. There has been no suggestion that the Lessees have suffered the kind of prejudice considered relevant in the Daejan case referred to above.
11. On the basis of the evidence before it the **Tribunal therefore grants Dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**

12. In accordance with the terms of the Application the Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS
17 March 2016

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. 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.
2. 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.
3. 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.