



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

Case Reference : CHI/21UD/LDC/2014/0014

Property : 26 Eversfield Place, St Leonards on Sea, East
Sussex, TN37 6BY

Applicant : Eversfield Property Management Limited

Representative : Mr Arthur Cahill

Respondents : Mr M Andrews
Mr R Sharkey
Mr T Dodd & Mr S Cooper
Ms M Still
Mr C Van Tonder
Mr A Cahill
Mr B Fox

Representative : N/A

Type of Application : Section 20za of the Landlord & Tenant Act 1985

Tribunal Members : Judge S Lal
Mr A Mackay FRICS

**Date and venue of
Hearing** : 30th April 2014, Horntye Park, Hastings

Date of Decision : 1st May 2014

DECISION

Application

1. The Applicant in this case has now acquired the management function in relation to the subject premises.

2. The matter was subject to Directions issued on 2nd April 2014.

The Inspection

3. The Tribunal inspected the subject property on the morning of the hearing. It is a mid-terrace building that has been converted into self-contained flats in more recent times. It is situated on the sea front in St Leonards. The building appears to be of original construction with what appears to be solid brick walls. Elevations are rendered brick under a shallow pitch roof.
4. Mr. Cahill, the Applicant's representative was also present and showed the members round the property. The inspection was limited to a view of the front elevation of the building from the kerbside and the public ways. Neither the back of the property nor the interiors of the individual flats were seen.
5. The property comprises a terraced building on basement, ground and four upper floors arranged as 6 self contained flats formed as a result of a conversion with a rendered and painted front elevation terminating in a parapet behind which is a mansard type roof covered in concrete tiles. The property is approached by a flight of steps; beneath the steps is a lobby area giving access to the basement flat, Flat 1C. The underside of the steps is currently being held in place by a metal prop, with significant cracking in the formation to the underside of the steps with uneven and worn treads on the approach to the front door. There is a badly rusted manhole cover in the floor of the basement lobby
6. The public ways were found to be in poor repair with numerous hazards, particularly as the result of inadequate fire precaution measures where a comprehensive scheme of work is required including upgrading fire resistant qualities to the doors of the individual flats, protecting services on the ground floor compartmenting the building and repairs to balustrading to the staircase and the replacement of missing spindles. The carpeting was badly worn and in numerous places was being held in place by temporary repair using adhesive tape.

The Issue

7. The application is formulated on the basis that the Tribunal grant dispensation under Section 20Za of the Landlord and Tenant Act 1985.

The Law

8. 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.

9. 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 consequences 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.

The Evidence and Decision

10. Mr Cahill attended on behalf of the Applicant. Mr Cahill is also one of the Respondents. Prior to the hearing the Tribunal was supplied with a Bundle of 231 pages prepared by the Applicant and the Tribunal has considered this in full.
11. Mr Cahill stated that he was the only one of the leaseholders that actually lived in the subject premises and he had done so since 2001. He added that mostly social welfare tenants occupied the other flats and he recounted the history of incidents at the property, such as prostitution and drug dealing. He stated that no service charge had been paid since about 2006 and that the Tenant of the basement flat had finally contacted Hastings Borough Council in May 2013 about the conditions immediately outside of his flat. He accepted that it was the prospect of Council action as well as the poor state of the building, which lead him to manage the premises. He had tried local managing agents but they did not want to assist, the reason given was that the lease did not have provision for a reserve fund.
12. He had prepared his own Schedule of Works in about September 2013. He accepted at the hearing that his Schedule contained within it works that were both urgent as well as other work that was more generally remedial in nature. Following this a proposed Schedule of works was sent to leaseholders on 5th October 2013.
13. He also instructed Hugh Conlin MRICS to determine the nature of the urgent works that needed to be carried out to the premises in October 2013 and Mr Conlin prepared a Schedule of Works on 7th February 2014 as to what he perceived as the most urgent works, mainly to do with repairs to the steps and making good fire hazards.
14. In addition Hastings Borough Council served an Improvement Notice on 4th December 2013 and the Council also wrote to all leaseholders on the 18th February 2014 with HMO conditions. Mr Cahill states that there was a degree of overlap between what the Council identified and Mr Conlin. The statement of estimates was sent to the leaseholders on 29th March 2014.
15. Dispensation is now sought in respect of that which the Council has specified which Mr Cahill accepted at the hearing were those remedial works identified by Mr Conlin.
16. The Tribunal applying the legal principles cited above, notes that nothing has been received from the Respondents, which purports to identify any prejudice to them. Indeed the Tribunal was supplied with an email from Mrs Rachel Sharkey, currently based in Australia, where she supports the Applicant. Mr Andrews has also stated that he had no objection to the application for Dispensation. Mr Cahill himself is also a leaseholder.

17. The Tribunal is satisfied that for all practical purposes this is an uncontested application in respect of the factual burden of identifying prejudice. However the Tribunal will still apply the relevant legal principles to the evidence before it, mindful that Parliament has intended dispensation to be an exception to consultation.
18. In the circumstances and following the poor and dangerous state of the steps observed by the Tribunal as well as the immediate fire safety issues identified by the Council, the Tribunal is satisfied that it would be reasonable and proper to grant dispensation from consultation in the terms requested. For the avoidance of doubt that means that Dispensation is confined to those works identified by Mr Conlin in his Scope of Works. The Tribunal makes no findings as to whether those sums are in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.
19. The Tribunal makes no further order.
20. 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.
21. 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.
22. 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

Judge S. Lal 

Date..... 