



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

Case Reference : CHI/00MR/LDC/2017/0024

Property : St Helens Mansions, 1-2 St Helens Parade,
Southsea PO4 0RU

Applicant : St Helens Mansions Ltd

Representative :

Respondent : The Leaseholders

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Mr D Banfield FRICS

Date of Order : 17 May 2017

DECISION

The Tribunal therefore grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works identified in paragraph 2 of this determination.

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 during existing works for which consultation was carried out further works have been identified which could be carried out using the existing scaffolding. The works are said to be;
 - “Full repair and urgent repair work to the roof”
 - “Window mastic sealing works”
 - “Metalwork railing repairs”
 - Replacement of bird spikes
 3. The Applicant says that extensive consultation with “members” has taken place and that additional funds are now needed to carry out these imperative and urgent works.
 4. The Tribunal made Directions on 10 April 2017 and required the Applicant to send a copy together with a copy of the application and a form for the Respondents to indicate whether they opposed the application and if they required an oral hearing.
 5. Response forms have been returned by seven of the eight lessees. Six lessees indicated they were in favour and did not object to a decision on the papers. One Lessee was against, requested an oral hearing and indicated that he would submit written representations to the Applicant by 9 May 2017. None has been received and in a telephone conversation with the Case Officer indicated that he no longer required an oral hearing.
1. No sustained objections having been received the application is determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
 2. **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

3. 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.

4. 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.

Evidence

5. Copies of a report from NOW Chartered Surveyors dated 2 April 2017 detailing the existing disrepair and their recommendations including that the work is done as part of the current repointing programme. Photographs show the extent of the deterioration concerned. A Further report from NOW dated 12 May 2017 identifies the works required to the roof and provides clear photographs of the current defects.
6. The Applicant states that the Landlord is a lessee owned company and that all 9 leaseholders are equal Members.
7. Lessees have been kept informed by emails and reports

Decision

8. 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 the requirements.
9. In this case the reports from NOW Chartered Surveyors identify the work required attention and that it should be carried out as part of the ongoing repointing programme.
10. No prejudice of the type referred to in the Daejan case referred to in paragraph 4 above has been identified.
11. Six lessees are in favour, one is silent and the other has not identified his objections.
12. The Tribunal is satisfied that the works identified should be carried out as part of the ongoing refurbishment and that the delays caused by full consultation would render this impractical.
- 13. The Tribunal therefore grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works identified in paragraph 2 of this determination.**
- 14. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
17 May 2017

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.