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

**Case reference** : **CHI/24UN/LDC/2016/0025**

**Property** : **19 and 20 The Hexagon, Andover,  
Hampshire SP10 3PR**

**Applicant** : **Aster Communities**

**Applicant's  
Representative** : **Capsticks Solicitors LLP**

**Respondents** : **Jo Brady  
M Barrett**

**Tribunal member** : **Mr D Banfield FRICS**

**Date of Directions** : **4 August 2016**

**Summary of decision**

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

## 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 advised that as a result of complaints water ingress investigation were made and it was discovered that the concealed rainwater pipe in the void behind the facing bricks was fractured. It was then determined to replace each of the soil and vent pipes serving each bathroom.
3. Due to the nature of the works occupiers have had to be decanted the cost of which is being met by the landlord.
4. Two contractors were asked to quote for the works and the lower quote from Andover Gas and Water was accepted. Due to the urgency of the problem no consultation was carried out.
5. Directions were made on 21 June 2016 a copy of which together with the application form was sent to both lessees with a form to be returned to the Tribunal if the recipient objected to the works and if they required an oral hearing.
6. No objections have been received and in the absence of a request for an oral hearing the Tribunal has determined the matter on the basis of the information contained within the hearing bundle prepared by the Applicant.
7. **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

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 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**

10. In a statement from Paul Roberts Senior Surveyor (Hampshire Repairs) the Applicant described the works that were required and provided photographs showing the defects that required repair.
11. The need for urgent action was described and the difficulties involved in determining the extent of the work involved when dealing with occupied flats.
12. The reluctance of contractors in committing themselves to a firm price were also described together with the negotiations that had taken place to

reduce the cost below the original costing which had been reported to the Respondents.

## Decision

13. Mr Roberts' statement clearly sets out the urgency of this matter and the difficulties involved in obtaining competitive quotations for a job requiring extensive investigative work.
14. The Respondents have been notified of the application and have had the opportunity of objecting and calling for an oral hearing. No such objection or call has been made and the Tribunal is satisfied that the prejudice referred to in the Daejan case referred to in paragraph 9 above has not been shown.
15. 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.**
16. 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  
4 August 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.