



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

**Case Reference** : CHI/00HB/LDC/2019/0024

**Property** : 29-43 Linden Court, Clarence Road, Bristol  
BS15 1PB

**Applicant** : Sovereign Housing Association Limited

**Representative** :

**Respondent** : Miss S Cox (Flat 30)

**Representative** : ---

**Type of Application** : Dispensation from consultation  
requirements

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Decision** : 6 May 2019

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DECISION

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**The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for remedial work to sunken pavers in the car park**

**In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## Background

1. By 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 Act.
2. The Applicant explains that planned remedial work to sunken pavers in the car park were commenced at an estimated cost of £880.48 which was below the threshold for consultation. However, once the contractor commenced work it became apparent that the damage was far more extensive than envisaged and extensive work was necessary as a matter of urgency because of risks to users of the car park. It was considered that there could be no delay due to the risk to health and safety. The costs incurred for the extensive work amounted to over £12000.
3. The Tribunal made Directions on 26 March 2019 subsequently amended on 3 April 2019 requiring the Applicant to send a copy of the application and the Tribunal's Directions to each lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.
4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents
5. Three replies were received two of whom agreed with the application. These lessees and those who did not respond have therefore been removed as Respondents as previously indicated.
6. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.
7. The only issue for the Tribunal is if it is reasonable to dispense with any 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:

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

## **Evidence**

10. In the unsigned and undated statement attached to the application the circumstances of the application are as set out in paragraph 2 above. Photographs have been provided showing the entrance to a large inspection chamber and a void beneath the block paving. The applicant asserts that it is responsible for carrying out the works the cost of which is to be shared amongst the lessees and shared owners.
11. A quotation dated 11 December 2018 details the extent of the work required.
12. The Respondent objects to the application but has not provided a statement as to her reasons for doing so.

13. The Lessee of Flat 41 has not returned a form to the tribunal but, in a letter dated 9 April 2019 has raised queries in respect of the ownership of the land on which the inspection chamber is situated, with whom the responsibility for sealing it lay, for what purpose and when it was constructed and whether insurance cover was available.
14. In a reply dated 24 April 2019 the Applicant says that although insurance is held the works were not considered to be the result of subsidence and as such were not covered. Enquiries were being made in order to answer her other questions following which they would contact her.

### **Determination**

15. It is accepted that once discovered it was necessary to effect repairs without delay in order to make the area safe. It is also accepted that the unavoidable delay caused by complying with the consultation requirements of S.20 would have been unreasonable.
16. The Respondent who objected to the application has not provided any reasons for the Tribunal to address. The matters referred to in paragraph 13 above are not relevant to whether dispensation from consultation should be granted although they may be relevant to whether the resultant costs are recoverable.
17. No evidence has been provided indicating that the Respondent has been prejudiced in the manner considered in the Daejan case referred to in paragraph 9 above.
18. In these circumstances I am satisfied that the dispensation requested should be given.
19. **In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for remedial work to sunken pavers in the car park**
20. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
6 May 2019

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 appeal is seeking.