



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

Case Reference : CHI/00HG/LDC/2019/0070

Property : 165 Bodmin Road, Whitleigh, Plymouth,
Devon PL5 4AR

Applicant : Plymouth Community Homes Limited

Representative : -

Respondent : Andrew George James Moore

Representative : -

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

Tribunal Member(s) : Judge E Morrison

Date of Decision : 1 October 2019

The Tribunal grants dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 for renewal of the communal pathway, steps and walls and installation of a new handrail.

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 (“the Act”) from the consultation requirements imposed on the landlord by Section 20 of the Act in respect of renewal of the communal pathway, steps and walls and installation of a new handrail serving 165 and 167 Bodmin Road. The work was carried out between 27 August and 5 September 2019, before the application was made.
2. The Tribunal made Directions on 11 September 2019 requiring the Applicant to serve a copy of the application and the Directions on the Respondent, being the lessee of 165 Bodmin Road. Included with the Directions was a form for the lessee to complete indicating whether he agreed with or objected to the application.
3. The Respondent did not respond to the application. However the bundle includes a letter signed by the Respondent on 18 August 2019 agreeing to the works proceeding.
4. There was no request for an oral hearing and the application is therefore determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules.
5. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

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

20ZA Consultation requirements: supplementary
(1) Where an application is made to the appropriate 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.
7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
 - a. 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.
 - b. 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.

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

Evidence

8. The Applicant explains that the need for the works was identified following an inspection on 15 July 2019. It was considered that the condition of the path and steps was unsafe. An estimate for the works was obtained and provided to the Respondent on 14 August 2019; he agreed to the works proceeding.
9. Photographs of the steps and path have been provided in the bundle. They appear to corroborate the Applicant's case.

Determination

10. The Tribunal is satisfied that it was necessary to commence works without the inevitable delay of carrying out a Section 20 consultation, on the ground of urgency. No objection has been received and no evidence of the type of prejudice referred to in paragraph 7 above has been identified.
11. **In accordance with the above the Tribunal grants dispensation from all the consultation requirements of section 20 of the Act for renewal of the communal pathway, steps and walls and installation of a new handrail.**

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

Judge E Morrison

3 October 2019

Appeals

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.