



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

Case Reference	: CHI/21UD/LDC/2020/0005
Property	: Sandrock Hall, The Ridge, Hastings, East Sussex TN34 2RB
Applicant	: Sandrock Hall RTM Company Limited
Representative	: Oakfield Property
Respondent	: Mr C S Caldwell Ms M R Ridley
Representative	: Sussex Legal Consultants
Type of Application	: To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	: D Banfield FRICS Regional Surveyor
Date of Decision	: 26 May 2020

Decision

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the following works;

- **Removal and reinstatement of the flat roof flashings and pitched roof repairs**
- **New fire detection system**
- **New French drains to the perimeter of the property**

Dispensation is subject to the condition that a minimum of two quotations are obtained before works are commenced and, unless the lower quotation is accepted a written

statement must be provided to the Lessees giving reasons for the decision.

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

Background

2. 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.
3. Dispensation is required for;
 - a) Removal and reinstatement of the flat roof flashings and pitched roof repairs
 - b) New fire detection system
 - c) New French drains to the perimeter of the property
4. Directions were made on 20 January 2020 and the matter listed for an oral hearing at the Respondent's request. The Coronavirus pandemic caused a suspension of inspections and of Tribunal hearings in person and further directions were made on 8 April 2020 indicating that the application would be determined on the papers unless a party objected. No objections have been received and the application is therefore determined without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.
5. In view of the change from an oral to a paper hearing the parties were invited to submit further evidence including photographic evidence should they wish to do so. The Applicant indicated that nothing further was to be submitted. A supplementary statement was received from the Respondents.
6. The directions of 20 January 2020 indicated that parties who did not return the form attached or who agreed with the application would be removed as Respondents. All Lessees with exception of those shown on the title page have therefore been removed as Respondents
7. The hearing bundle has been submitted by email and numbers 201 pages plus a further copy of CCMR1 which includes colour copies of photos at pages 174 to 196 of the main bundle.
8. The only issue for the Tribunal is whether 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.**
9. Reference to page numbers in the bundle are shown as [x].

The Law

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

20ZA Consultation requirements:

a. 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.

11. 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

- i. 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.
- ii. 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.
- iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- v. 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).
- vi. 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.
- vii. 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.

- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

Applicant

- 12. Attached to the Application was a Defect Analysis Report from Harding Bond Property Consultants dated 6 January 2020 [15]. Section 6 listed the recommended action to be taken which was to prepare specifications for items listed at 2a and b above and to carry out the works at 2c. [21]. The report made reference to earlier specifications prepared.
- 13. Letters at [23] and [25] in 2017 and 2018 to SHM 2006 Ltd refer to a specification which included works in response to the Fire Reforms Orders. the
- 14. On 24 January 2020 letters were sent to the Lessees indicating that an application for dispensation had been made and enclosing the Tribunal's directions, a reply form and a copy of the survey report. [54-69].

Respondents

- 15. One reply form was returned agreeing to the application and two forms of objection with supporting statements from Ms Ridley and Mr Caldwell. [75-100]
- 16. The statements were largely identical in content and accepted that significant works were required. It was indicated that S.20 consultations were commenced by Harding Bond in 2016 (by SHM2016 and Oakfield) and partially completed and on 1 November 2018 Southdown Surveyors were instructed to prepare an updated report. Due to the RTM application these works could not be completed.

17. Significant costs have already been incurred in respect of Harding Bond's fees in 2016 duplicated by their January 2020 report and a penalty of 75% of costs that would have to be paid if Southdown's instructions did not proceed.
18. Reference was then made as to the reasons why previous repairs did not proceed, that lessees faced significant costs, that all relevant papers had been passed to the RTM company and that proper consultation was required.
19. A letter from Southdown Surveyors Ltd date 2 November 2018 together with their terms of engagement in respect of works of internal and external decoration, carpet renewal, roof covering renewal, associated repairs and internal fire precaution works are exhibited together with an acceptance signed by SHM (2016) Ltd [104-112]

Applicant

20. In a statement of reply [143] the Applicant refuted some of the Respondents' claims regarding matters prior to the formation of the RTM and subsequent cooperation. The 2016 works did not proceed because SHM (2016) Ltd withdrew its instructions to Oakfield and it was unnecessary to appoint Southdown when a specification and plan of works was already in place.
21. Leaseholders are aware of what works are required having been previously consulted in respect of the abandoned project. There are flats suffering significant water ingress and there are concerns over the lack of fire protection. It is intended to obtain at least two tenders for the work
22. Statutory consultation will be carried out if the Tribunal consider it necessary.

Respondents Supplementary Statement

23. In a joint statement from the Respondents [157] it was agreed that in the current circumstances it was reasonable to determine the matter on the papers.
24. It was accepted that the long-standing dispute between the parties does not affect this application but there remained a concern as to the financial implications of proceeding without proper consultation.

25. The main reason for objection is the inadequacy of the specification of works and the contractors being used, Sandrock Hall requiring specialist restoration, it being a period property.
26. The Applicant has already commenced a formal S.20 consultation with a Notice of Intention to Carry Out Works dated 27 February 2020. They have replied with objections.
27. As lessees of Flats 11 and 8 and Executors in respect of Flats 5 and 9 it is essential that the proper consultation process continues. Photographs were attached showing there are roof works required to the gable end which have not been accounted for in Harding Bond's report of 6 January 2020. Further concerns are the roofs over Flats 9 and 11 including the chimney breast. Nothing has been included in Harding Bond's specification.
28. "The Applicant was and is fully aware of the history of the issues at Sandrock Hall and its attempt to steam roller a schedule of incomplete works is both negligent and a breach of its duty to the lessees."
29. An application for a determination under Section 20C is made that any costs of the application may not be recovered through the service charge.
30. Appended to the statement were copies of the Notice of Intention [163 & 166] referred to above together with their objections which included comments on certain contractors and suggestions as to contractors from whom tenders could be sought. [165 and 167]

Determination

31. 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 those requirements.
32. This is clearly a situation with a long history of dissent between the freehold company and some lessees. Both sides agree however that significant works are necessary as evidenced by the previous attempts to carry them out. Why those attempts failed is not a matter for consideration in this application. Likewise, the reasons for the dispute leading to the formation of the RTM has no bearing on the Tribunal's determination.
33. The consultation procedures required by S.20 are to give lessees notice of proposed works, give them an opportunity of putting forward suggested contractors and generally being consulted.

34. Consultation does not however oblige a landlord to accept the observations made by those consulted. It merely has to take them into consideration. They may be accepted, or they be rejected, it is for the landlord to decide.
35. This does not however give the landlord free rein to spend lessees' money unwisely. Section 19 of the Landlord and Tenant Act 1985 requires costs to have been *reasonably incurred* and to a *reasonable standard* and if they are not, Section 27A gives the Tribunal the power to determine any dispute.
36. The only issue for the Tribunal therefore is whether, with regard to the works referred to in paragraph 2 above, the lack of consultation has prejudiced the Respondent in that if it had taken place would the landlord have done something different when arranging for repairs to be carried out?
37. Both parties make reference to documents which have not been included in the bundle. The Respondents refer to a schedule of works and the Applicants Reply at [143] refers to Appendices. Neither omission is critical to my determination as any dispensation is in respect of the three matters referred to at paragraph 2 and is not in respect of a particular specification. The Applicant's appendices all appear to relate to matters not relevant to this determination.
38. The Respondents raise the issue of wasted professional costs as a reason for objection and the use of certain consultants with whom the landlord company has a dispute. Neither is a reason for denying dispensation. The Tribunal has made it clear in its directions that the determination does not concern whether costs are payable that being a matter for S.27A.
39. Likewise, the Tribunal is not being asked to approve any particular contractor or schedule of works and no particular contractor or indeed detailed specification has been put before the Tribunal for consideration. As referred to in paragraph 36 above such matters are not part of this application.
40. In making my determination that dispensation should be granted I bear in mind that there is no dispute that works are required and that all parties have had the time and opportunity to comment on the works for which dispensation is sought.
41. It is clear that the works should be carried out without the further delay that Section 20 consultation inevitably involves. No evidence of

relevant prejudice as considered in the Daejan case referred to above has been identified.

42. In view of the significant costs that are likely to be incurred in carrying out these works competitive tenders should be sought and this will be made a condition of this determination.

43. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the following works;

- **Removal and reinstatement of the flat roof flashings and pitched roof repairs**
- **New fire detection system**
- **New French drains to the perimeter of the property**

44. Dispensation is subject to the condition that a minimum of two quotations are obtained before works are commenced and, unless the lower quotation is accepted a written statement must be provided to the Lessees giving reasons for the decision.

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

Costs

46. The Respondents have indicated that they wish to apply for an Order under Section 20C. Before it makes its determination, the Tribunal invites both parties to send submissions to RPSouthern@justice.gov.uk by 9 June 2020

D Banfield FRICS

26 May 2020

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application to trpsouthern@justice.gov.uk. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application 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.