FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/ 24UP/LDC/2020/0095
Property	:	Flats 1-21Warwick Court, Northlands Drive, Winchester SO23 7AL
Applicant	:	Malcolm Carter & Susannah Segal as Trustees of the Locker Foundation
Representative	:	Proxim Property Management fbarnett@proximpm.co.uk
Respondent	:	The Lessees
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	8 February 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof repairs comprising the replacement of valleys together with the associated scaffolding.

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

Background

1. The Applicant sought 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 explained that roof repairs were carried out to replace 6 x valley gutters over Flats 4, 12 & 21 Warwick Court following torrential rain causing extensive flooding in Winchester in an effort to prevent further damage to the flats.

3. The Tribunal made Directions on 16 December 2021 indicating that the application was to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.

4. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.

5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.

6. Six lessees responded indicating that they agreed with the application and in the absence of objections, the Lessees have been removed as Respondents in accordance with paragraph 5 above.

7. No requests for an oral hearing have been received and on receipt of the hearing bundle the issues were examined to determine whether the application could be satisfactorily determined on the papers. The Tribunal is so satisfied and the application is therefore determined in accordance with Rule 31.

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.

The Law

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

S.20 ZA Consultation requirements:

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.

10. 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 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

11. A bundle was provided as directed which contained the Applicant's statement of reasons and supporting documentation.

Determination

12. 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.

13. It is clear that leaks affecting residential accommodation must be remedied urgently and that to follow the required consultation procedures would have incurred delays.

14. No objections were received from the Lessees and therefore there has been no indication that they had incurred prejudice as referred to in the Daejan case referred to above.

15. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof repairs comprising the replacement of valleys together with the associated scaffolding.**

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

17. **A copy of this decision shall be sent to the Residents' Association.**

D Banfield FRICS
8 February 2021

RIGHTS OF APPEAL

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 be sent by email to rpsouthern@justice.gov.uk

2. 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.

3. 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.

4. 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