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

**Case reference** : **CHI/29UL/LDC/2015/0049**

**Applicant** : **Trustees of the Viscount Folkestone  
(1963) Settlement**

**Representative** : **Smith-Woolley & Perry**

**Respondents** : **The Lessees**

**Property** : **10 Castle Hill Avenue, Folkestone,  
Kent CT20 2QT**

**Date of decision** : **14 January 2016**

**Summary of decision**

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

## Background

1. Following consultation under Section 20 Landlord and Tenant Act 1985 the extent of the works had increased significantly and by an application dated 11 November 2015 the Applicant sought dispensation from any further consultation that may be required.
2. Directions were made on 18 November 2015 which, together with a copy of the application and a form for Lessees to indicate to the Tribunal whether they opposed the application was sent to all parties.
3. The background to the application was that:
  - Following a S.20 consultation process described as *Damp and Dry Rot Related Works* a contract was awarded to MTS at a contract sum of £10,950 + VAT involving works to Flats 2 and 3.
  - Once work commenced it was discovered that the building was affected by damp and dry rot to a greater extent than had been originally envisaged. Further works were carried out in Flats 3 and 4 and the Lessees informed in writing on 19 August 2015.
  - Opening up of the roof was then considered necessary and the lessees informed on 30 September 2015. Further opening up in Flat 4 then took place revealing a second outbreak of dry rot.
  - A revised costs schedule was prepared and sent to the Lessees on 3 November 2015 with a revised estimated final cost of £30,000+VAT.
4. **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

5. 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.
6. 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.

## **Submissions**

7. The history of this matter is set out in paragraph 3 above. In the application the property is described as a late Victorian mid-terrace building converted into 5 flats.
8. The Applicant refers to the difficulty in predicting the extent of dry rot until the building is opened up and that it is not feasible to seek further competitive tenders once the work has commenced. An independent

Building Surveyor is overseeing the work and advises the additional costs are reasonable.

9. The Tribunal has not received any objections from the lessees.
10. The lessees have been kept fully aware of the proceedings and have met the proposed contractor.

### **Decision**

11. The managing agents have set out the case clearly having explained the difficulty in estimating the final costs where dry rot is involved. There is an independent Building Surveyor advising and the lessees have been kept fully informed throughout. There have been no objections to the application from the lessees or any suggestion that they have suffered the prejudice considered in the Daejan case referred to above.
12. 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.**
13. 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  
14 January 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.