



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

Case Reference : CHI/ 00HG/LDC/2018/0034

Property : 23 & 24 Parkside, Keyham, Plymouth PL2
1LH

Applicant : Plymouth Community Home Limited

Representative :

Respondent : Mr S Owen

Representative :

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

Tribunal Member(s) : Mr D Banfield FRICS

Date of Directions : 20 June 2018

DECISION

- 1. The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to the drains as referred to in the Application.**

In granting dispensation in respect of part of the Application 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. The Applicant explains that urgent works are required to remove and replace pipework to the sewage drain following a possible collapse.
4. The Tribunal made Directions on 9 April 2018 requiring the Applicants to send a copy of the application together with the Directions to each Respondent.
5. The Respondents were invited to complete a form and return it to the Tribunal indicating whether they agreed or objected to the application, whether they wished to remain as Respondents and whether an oral hearing was required.
6. The Lessees were advised that if they agreed to the application or did not return the form they would be not remain as Respondents.
7. One response was received agreeing to the proposal but asking to remain as a Respondent.
8. 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

9. 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.
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
 - 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

- 11. In their statement of case the Applicant explains that on 19 March 2018 they were advised by a leaseholder that the drain was blocked and that they had to stay at alternative accommodation. A camera inspection was carried out and it was suspected that the drain was collapsed. Repairs were needed to be carried out urgently and the leaseholders agreed to their proposal to dispense with the 30 day consultation period and the need for alternative quotations. It was also explained that an application to the Tribunal would be made. The work was started on 28 March 2018.

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 the requirements.
- 13. Letters from both lessees agreeing to the works have been exhibited
- 14. These works were clearly urgent, neither lessee has objected and no evidence of prejudice as referred to in paragraph 9 above has been demonstrated.
- 15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to the drains as referred to in the Application.**

16. In granting dispensation in respect of part of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

D Banfield FRICS
20 June 2018

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.