

12854



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

Case Reference : CHI/ 45UE/LDC/2018/0035

Property : 39-73 (odds) Five Acres, Northgate,
Crawley, West Sussex RH10 8HN

Applicant : Crawley Borough Council

Representative : Mr Simon Bagg, Legal and Democratic
Services

Respondent : -

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 : 7 June 2018

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the existing balcony rails and the repair of the concrete balcony slabs.

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

1. 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.
2. The Applicant explains that urgent works are required to replace the existing balcony rails and repair the concrete balcony slabs.
3. The Tribunal made Directions on 17 April 2018 requiring the Applicants to send a copy of the application together with the Directions to each Respondent.
4. 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.
5. The Lessees were advised that if they agreed to the application or did not return the form they would be not remain as Respondents.
6. One response was received agreeing to the proposal and therefore in accordance with directions the lessees are removed as respondents.
7. 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

8. 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.
9. 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

- 10. On 1 April 2010 the Council entered into a 10 year Qualifying Long Term Agreement (QLTA) with MITIE Contractors.
- 11. On 2 August 2017 the Council served S.20 Notices of intention which included amongst other works those matters for which dispensation is now sought. The consultation period was extended to enable a meeting with leaseholders which took place on 23 October 2017. Due to weather the works were delayed until spring 2018. On 11 January 2018 the Notice was cancelled as the scope of the work had changed and on 5 March 2018 a revised S.20 Notice was served which amongst other matters included those referred to in paragraph 2 above.
- 12. An engineer's report of 13 December 2017 from Dixon Hurst Kemp suggested that checks should be carried out on a first floor balcony and that the other balconies were not considered to be a safety risk at present.
- 13. A further check on 17 January 2018 found the condition unchanged but on 13 February 2018 the Council was informed that a balcony had begun to deteriorate and a Structural Engineer was invited to attend.
- 14. In their report of 5 March 2018 Dixon Hurst Kemp referred to the sudden deterioration in condition, probably due to recent cold weather, That concrete had fallen away removing balustrade fixing points, that balconies to the southern block should not be used and access to ground floor patios be restricted.

15. Remedial work should comprise removal of all cracked concrete and following preparation of the exposed reinforcing steel to reinstate with concrete mortar.
16. By a letter dated 6 March 2018 Lessees were advised by the Council of the position and that until repairs had been carried out balconies and patios were not to be used.
17. On 7 March 2018 the Council wrote to Lessees indicating that the balcony works were urgent and that as they could not wait for the completion of the consultation procedure an application was to be made for dispensation.
18. On 20 March 2018 a meeting was held with leaseholders at which there was no objection to the urgent works being carried out but with a number of comments on other works referred to in the S.20 Notice (not forming part of this application for dispensation).

Determination

19. 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.
20. The dispensation requested is from the requirement to give the full 30 day's consultation period following the Notice of Intention given on 5 March 2018.
21. Where a QLTA is in place the lessees do not have the opportunity of nominating their own contractor and their rights to be consulted are in respect of the scope of the works only.
22. Lessees have been aware of these works since at least August 2017 and have had the opportunity to make their views known at meetings on 23 October 2017 and 23 March 2018 as well as in email exchanges.
23. These works are clearly urgent, no lessee has objected and no evidence of prejudice as referred to in paragraph 9 above has been demonstrated.
24. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the existing balcony rails and the repair of the concrete balcony slabs.**
25. **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
7 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.