FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HH/LDC/2020/0080
Property	:	Coverdale Mansions, 23 Palace Avenue, Paignton TQ3 3EF
Applicants	:	Carron Berry and Fiona Wallace
Representative	:	
Respondents	:	Mr M Judge, Flat 3 Mr P Taylor, Flat 4 Mr C Reeves Flat 5
Representative	:	-
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985 (The Act)
Tribunal Member(s)	:	W H Gater FRICS MCIArb
Date and Venue of Hearing	:	Determination on Papers
Date of Decision	:	19 November 2020

DECISION

The Application

1. The Applicants seek 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 Application for dispensation was received on 16 October 2020.

3. On 21 October 2020 the Tribunal issued directions on the management of the case.

4. The Tribunal directed that the application is to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects in writing to the Tribunal within 14 days of the date of receipt of these directions. No such objections were received.

5. The Tribunal directed the Respondents to return pro-forma to the Tribunal by 4 November 2020 indicating whether they agreed or disagreed with the application. Two leaseholders objected to the Application, Mr Judge and Mr Reeve. Mr Taylor was therefore removed as a Respondent in the matter.

6. Prior to determination and after the hearing bundle had been delivered, further email correspondence was submitted in a piecemeal manner in contravention of the Directions. The tribunal reminded the parties of this and found that the evidence in the bundle was sufficient to determine the matter in full.

The Law

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

20ZA : 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.

8. 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: -

9. 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.

10. 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.

11. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

12. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

13. 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).

14. 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.

15. 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.

16. 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.

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

Evidence

<u>The Applicants</u>

18. The Applicants request a dispensation from consultation requirements in respect of emergency work to the staircase leading up to Flat 3 on the second floor of the property and the connecting landing due to dry rot being discovered.

19. They were alerted to a potential problem in March 2020, and, mistakenly thinking this was a damp problem, engaged damp specialists. Due to the Pandemic crisis these specialists were not available to inspect the property until mid-July 2020.

20. On 21 July 2020 the Applicants were advised that there were signs of dry rot present in the staircase leading to Flat 3 and further

investigation was required. Rising damp was found on a section of one of the walls in the main entrance hall on the ground floor.

21. Further investigation on 24 July 2020 revealed extensive dry rot in the staircase. The specialists advised that the staircase needed to be replaced as soon as possible but that the staircase was still safe to use. The managing agent was instructed to advise all the tenants of the situation and placed signage in the communal areas informing all occupants.

22. Only one other specialist was available to investigate the dry rot and on 28 July 2020 Brixham Damp Proofing attended the property and immediately condemned the stairs. The managing agent notified all tenants on the same day. Due to the urgent nature of the work and the stairs being condemned as not safe to use, Brixham Damp Proofing were instructed to quote for the job and contact suppliers for a new staircase urgently.

23. Brixham Damp Proofing confirmed on 29 July 2020 that they could commence work immediately and had located a suitable staircase to install and were instructed to commence work on 30 July 2020.

24. The first specialist who attended could not commence work for several weeks at this point and had confirmed a verbal estimate which was a similar price to Brixham Damp Proofing but did not include the cost of supplying and fitting a new staircase. The Applicants have since received an estimate in writing reconfirming the verbal estimate which was similar to Brixham Damp Proofing.

25. The Applicants arranged alternative accommodation for the occupants who could not access their flats; this accommodation was accepted by Mr Taylor (Flat 4) and Mr Reeves (Flat 5). The owner of Flat 3 declined the alternative accommodation offered and confirmed that he would access his flat via the fire exit connected to his flat.

26. The Applicants notified Torbay Environmental Health department of the issue and the emergency work being carried out. On 5 August 2020 Torbay Environmental Health department inspected the property and confirmed that they were in agreement that the work needed to be carried out as a matter of urgency and were satisfied with the measures taken.

27. During the works, further dry rot was found on the landing outside flat 3. This needed to be removed and the area treated before the new staircase could be installed. The original estimate from Brixham Damp Proofing states that due to the invasive nature of dry rot it is not always possible to ascertain the full extent of the attack until timbers have been removed.

28. On 7 August 2020 Brixham Damp Proofing confirmed that the new staircase had been installed and was now safe to use. On 26 August

2020 Torbay Environmental Health, having inspected the completed works closed the case.

29. Regarding consultation the Applicants state that they have communicated with all tenants via the Managing agents keeping them informed of the qualifying works and costs throughout the process.

30. All tenants were informed on 30th July 2020 of the estimated costs for the dry rot work, the associated costs of alternative accommodation, new carpet and redecorating. They were also advised in this email that all owners were responsible for 1/5 of the final costs and that a payment plan could be agreed with each owner.

31. A further letter was sent to all tenants on 26th August 2020 stating the final costs which included the costs for all of the dry rot work and additional work required, alternative accommodation, new carpet and decorating the affected areas.

32. Finally, in their application the Applicants state that the nature of the dry rot work required constituted an emergency therefore it was not possible to apply Section 20 due to this process potentially taking up to three months. The Section 20 procedure would have delayed the work with the stairs being cordoned off immediately and unusable until work had been carried out; this would have denied access to Flats 3, 4 and 5 for weeks or months while the outcome of a Section 20 was awaited. By arranging alternative accommodation, they kept disruption to an absolute minimum.

33. They state that their actions were, in essence, endorsed by a response from the Torbay Environmental Health department who advised that, had they not acted then, they would have likely placed an Emergency Prohibition Order which would have made it an immediate offence to occupy any of the flats in the property that were accessed by the effected staircase, or indeed the whole property, as the Council would need to ensure that nobody had access to a dangerous staircase. This would have caused far more disruption and significant extra expense.

34. They conclude that the tenants have not been prejudiced by not being consulted specifically that the extent, quality and cost of the works was unaffected.

The Respondents

35. Mr Judge ,in his objection ,makes five points.

36. He does not accept that the Section 20 process has been followed correctly and does not believe relevant time was given to notify all the leaseholders regarding the issue with the staircase. He believes that there could have been more time to obtain competitive quotes for the

work concerned and this should have been done to ensure the final cost was not unreasonable and not the final figure of nearly £10,000.

37. He does not understand why this is not covered by the insurance, or that there is no money in the top up funds for any work carried out on Coverdale Mansions. There has been no major work carried out in the building for the last 3 years.

38. Thirdly, the work that has been carried out has not been completed correctly, or even to a high standard. "For example, unfinished woodwork which includes sharp exposed edges, poor finishing on many parts of the staircase, gaps left in the skirting boards joints and the painting and decorating has not been completed. There has also been damage to my outer doorframe and the front door itself. There have been many issues whilst the work was being done, such as two major health and safety issues with large bits of debris not being cleared up, when Brixham Damp Proofing had finished for the day, where upon the first incident I almost slipped and fell down the stairs where a large lump of wood was left lying around. The second incident being a large piece of the banister came loose and almost struck me on the head, which had been poorly put back on the stairs. Please see pictures attached with this letter which highlight the issues I have raised." The Applicants point out in response that certain rectification works have now been carried out.

39. He does do not accept that he should have to pay for Flats 4 and 5 hotel accommodation as "he was able to gain access to my flat and still live in it".

40. His last point relates to the matter of paying for the works after his flat has been sold.

41. Mr Reeves gives a detailed commentary on the matter. He questions when the property was last surveyed and whether the rot should have been discovered earlier and believes that would have saved costs.

42. He also questions the Applicants' evidence that Torbay Council's Environment Department actually endorsed the steps taken or merely noted the existence of rot.

43. Mr Judge and Mr Reeves refer to matters of payment and reserve funds and the Applicants have added responses to objections.

Findings

44. The Tribunal emphasises that this is an application seeking dispensation from the requirement to consult on works. Much of the evidence provided relates to matters such as payment, liability and reserve funds which are outside of the jurisdiction of this case. The Tribunal will make no finding as to the payability or reasonableness of

the works. Such matters are more properly dealt through an application under Section 27A of the Act.

45. The Tribunal finds that there was a discovery of previously undetected dry rot and some dampness as described by the Applicants and that emergency measures were necessary. Due to the Pandemic crisis, the availability of specialists to quote for and execute the works was limited.

Determination

46. The Tribunal is satisfied from the Application and the evidence that the works were necessary, and urgent. The Tribunal accepts the Applicants' evidence that the steps taken by them in the circumstance were appropriate and unavoidable. Leaseholders were kept informed throughout and the situation was exacerbated by the Pandemic crisis.

47. In making this determination the Tribunal has considered in detail the representations made by the parties. It notes the strong feelings on both sides and the detailed objections made by the Respondents. There was, however, no evidence that the leaseholders would suffer relevant prejudice, to satisfy the tests in Daejan, if the Application was granted.

48. **The Tribunal, therefore, dispenses with the consultation requirements in respect of the emergency work to the staircase leading up to Flat 3 on the second floor of the property and the connecting landing due to dry rot being discovered.**

49. The Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works. The Tribunal has made no determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

50. The Tribunal directs the Applicants to inform the leaseholders of the Tribunal's decision and to display the written decision on a noticeboard in the common areas.

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

Due to the Covid 19 pandemic, communications to the Tribunal MUST be made by email to rpsouthern@iustice.gov.uk. All communications must clearly state the Case Number and address of the premises.