



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

Case Reference	: CHI/21UC/LDC/2020/0075
Property	: Flats 80-102 Madeira Way, Sovereign Harbour, Eastbourne, East Sussex BN23 5UJ
Applicant	: Madeira Way RTM Company Limited
Representative	: Housemartins Property Management
Respondent	: -
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	: On paper without a hearing on 18 November 2020

DECISION

Dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to repair a crack to the gable at the top level of the building by installing Heli-tie fixings through the coping stones, re-affixing them to the gable end wall.

In granting dispensation in respect 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 a crack to the gable at the top level of the building has occurred; the current proposal is to instal Heli-tie fixings through the coping stones, re-affixing them to the gable end wall.
3. The Tribunal made Directions on 23 October 2020 requiring the Applicant to send a copy of the application and the Tribunal's Directions to the Lessees. Also sent was a form for completion by the lessees indicating whether they agreed to or opposed the application. Notice was given that lessees who agreed or failed to respond would be removed as respondents.
4. Seven lessees responded all of whom agreed to the application and in accordance with the notice given in directions the Lessees are therefore removed as respondents.
5. Having considered the application the Tribunal was satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
6. The application is therefore determined on the papers.
7. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application 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:
(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

- a. 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.
- b. 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.
- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. 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).
- f. 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.
- g. 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.
- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Submissions

The Applicant's case

10. In accordance with Directions the Applicant submitted a hearing bundle containing all of the documents upon which this determination is made. The bundle contains;
 - a report from EAR Shepherd dated 12 September 2020 which describes the issues to be addressed and the remedial work recommended.
 - A letter to lessees dated 25 September 2020 explaining that urgent repairs are required and that dispensation was being sought due to the delays a full S.20 consultation would incur.

The Respondent's case

11. There have been no objections to the application.

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. The case of Daejan v Benson referred to above provides guidance to the Tribunal when considering the issues raised by the parties.
14. No objections have been received and no evidence of prejudice as referred to in the Daejan case has been identified.
15. The issue is clearly urgent and S.20 consultations would cause unreasonable delay in its resolution.
16. **For these reasons dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to repair a crack to the gable at the top level of the building by installing Heli-tie fixings through the coping stones, re-affixing them to the gable end wall.**
17. **In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
18 November 2020

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 RPSouthern@justice.gov.uk. 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.

