



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

Case Reference : CHI/00HG/LDC/2020/0092

Property : 17b Stonehall, Stonehouse, Plymouth,
Devon, PL1 3QZ

Applicant : Plymouth Community Homes

Representative :

Respondents : Miss A C Albrighton

Representative :

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

Tribunal Member(s) : Judge Tildesley OBE

**Date and Venue of
Hearing** : Determination on Papers

Date of Decision : 20 January 2021

DECISION

The Application

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 Plymouth Community Homes considered it necessary to carry out works as an urgent measure due to Health and Safety reasons. The staircase and landing were in urgent need of repair and there had recently been an accident due the steps being slippery.
3. The works carried out were as follows:
 - Removed the historic paint application to the steps and landing and power wash the complete area so there was no plant growth or lichen present prior to installing new steps.
 - Prepared the existing staircase for the installation of the new step sections.
 - Applied a SBR bonding agent to the clean surface, to act as a secure adhesion contact between the existing steps and the new material.
 - Rendered 11 steps including both treads and risers and the top entrance landing.
 - Liaise with the resident(s) concerning access.
 - Cut to size and install fibre-grid nosings to the tread, the nosings are textured for a grip surface and bright yellow in colour for high visibility, the nosings would be "glued and screwed".
4. The Tribunal understands that the work started at the end of November 2020 and was completed by 11 December 2020
5. The Application for dispensation was received on 12 November 2020.
6. On 25 November 2020 the Tribunal decided that the matter was urgent, it was not practicable for there to be a hearing and it was 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).
7. The Tribunal directed the Applicant to serve the application and directions on the Respondent which was done on 1 December 2020.
8. The Tribunal required the Respondent to return a pro-forma to the Tribunal and to the Applicant by 10 December 2020 indicating whether she agreed or disagreed with the application. The Applicant was given a right of reply by 17 December 2020.

9. On 3 December 2020 the Respondent returned the pro-forma indicating her agreement to the Application.

Determination

10. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
11. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a 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.
12. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
13. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
14. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the

amount claimed as service charges to compensate the leaseholders fully for that prejudice.

15. The Tribunal now turns to the facts. The Tribunal is satisfied that it was necessary to carry out the repairs as an urgent measure due to Health and Safety reasons. The Tribunal finds that there had been an accident on the stairs and that the Applicant's repair supervisor had advised that if the repairs were not carried out there was a strong likelihood of further accidents. The Tribunal holds that the Applicant could not wait to undertake a full consultation exercise before it carried out repairs. The Tribunal observes that the Respondent agreed with the Application.
16. The Tribunal is, therefore, satisfied that the Respondent would suffer no relevant prejudice if dispensation from consultation was granted.
17. **The Tribunal, therefore, dispenses with the consultation requirements in respect of the repairs to the staircase and landing.**
18. The Tribunal directs the Applicant to supply a copy of the decision to the Respondent and confirm that it has served it on her.

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.