



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

Case Reference : CHI/24UJ/LDC/2015/0018

Property : Westcliffe Buildings, Sea Road,
Barton on Sea, new Milton, Hampshire
BH25 7ND

Applicant : John Spurling
Paul Francis
Nicola Sacchetti

Representative : Spurlings, solicitors

Respondents : Adam James (Flat 55)
Mark Tuckey (Flat 53)
Mr and Mrs Abdalla (Flat 4)

Representative :

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

Tribunal Member(s) : Mr D Banfield FRICS
:

Date of Decision : 13 July 2015

DECISION

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 (“the Act”).
2. 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.
3. Directions were made on 23 April 2015 requesting the lessees to complete forms advising whether they supported or opposed the application and whether they required an oral hearing.
4. A form was received from the lessee of Flat 53 opposing the application on the grounds that he had not seen the updated quotation for the works or the letter from the Council stating the premises to be potentially dangerous.
5. No request for an oral hearing was received and the matter has therefore been determined on the basis of the bundle received and an inspection in accordance with rule 31 of the Tribunal Procedure Rules 2013.

The Law

6. 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.
7. 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
 - 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.

- The financial consequences to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- 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).
- 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.
- 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.
- 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.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

8. On 5 March 2012 I W Price and Partners submitted a report recommending remedial works to be carried out at the property.
9. In the autumn of 2013 quotations were received from three companies ;
 - Croft £180,000+VAT
 - Greendale £106,848+VAT
 - Drew £180,458 +VAT plus £31,433 +VAT for "remedial wall tie replacement"
10. On 21 February 2014 Notices of Intention under S. 20 Landlord and Tenant Act 1985 were sent to the lessees.

11. On 23 December 2014 New Forest District Council wrote to the Applicants referring to concerns they had raised in June 2012 regarding the structural defects present which had been discussed with the then managing agent and I W Price and Partners Chartered Engineers.
12. On 10 February 2015 the Council wrote again asking for confirmation that the remedial works referred to in I W Price and Partners report of 5 March 2012 were to be carried out and requesting a timetable for their implementation.
13. Following a request for the original three contractors to update their prices the only one returned was from Drew Construction dated 11 February 2015 at £114,125+VAT
14. On 11 May 2015 the Applicants sent copies of the updated quotation and copy letter from the Council to the lessee of Flat 53.
15. The Tribunal has seen the correspondence between the Lessee of Flat 55 regarding the possibility of demolition and redevelopment of the whole site.
16. The Tribunal carried out an inspection of the exterior and interior of the majority of flats from which it was able to confirm the presence of the "areas of concern" referred to in the Price report.

Decision

17. It is clear that the Applicants need to progress the remedial works without delay. It may seem strange that little progress has been made since the Price report in 2012 other than the eventually ineffective obtaining of quotes and the start of a S 20 consultation in February 2014. However, the Tribunal's decision is simply whether the application to dispense with the consultation requirements on the evidence now before it should be allowed.
18. The Council require the works to be carried out without further delay and only one quotation has been received. One lessee objected on the basis of lack of information that has now been provided. Another considers that wholesale redevelopment would be a better option. Neither has however provided any evidence of prejudice caused by the lack of the full consultation procedure.
19. **On the basis of the evidence before it the Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**

20. The Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS
13 July 2015

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 application is seeking