

10483



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

Case Reference : CHI/00HY/LDC/2014/0054

Property : Avonpark Village, Kingfisher Court,
Limpley Stoke,
Bath, BA2 7FF

Applicant : Retirement Villages Group Limited

Representative :

Respondents : The lessees listed on the application

Representative : Dr Trevor Rothwell, Secretary to the
Recognised Tenant's Association

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

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 8 December 2014

DECISION

Summary of Decision

The Tribunal give dispensation from further consultation and for the need to obtain additional quotations.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (The Act) from some of the consultation requirements imposed on the landlord by Section 20 of the Act.
2. The application concerns additional works to prevent ongoing water ingress into the top floor flats.
3. Earlier in 2014 Section 20 consultations were completed relating to the removal and replacement of existing coping stones. The contract was awarded to Bray and Slaughter and in the course of these works additional requirements were identified including the installation of Cavity Trays the costs of which it was considered required further Section 20 consultations.
4. An Initial Notice of Intention to Carry out Works was therefore sent to the leaseholders on 7 November 2014 requiring any observations to be received by 8 December 2014 with a simultaneous application being made to the Tribunal for dispensation from the remaining requirements of S.20 to the Act.
5. Directions were made on 19 November 2014 setting out a timetable for the resolution of the matter and requiring the leaseholders to complete a form stating whether they supported the application, whether they wished to make representations to the Tribunal and whether a hearing was required.
6. Sixteen of the eighteen lessees responded all of whom supported the application and none of whom required a hearing.

The Law

7. 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.
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

- 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.

The Evidence and Decision

9. The Tribunal applying the legal principles cited above, notes that nothing has been received from any of the possible Respondents that purport to identify any prejudice to them.
10. The Tribunal is satisfied that for all practical purposes this is an uncontested application in respect of the factual burden of identifying prejudice. However the Tribunal will still apply the relevant legal principles to the evidence before it, mindful that Parliament has intended dispensation to be an exception to consultation.
11. The Tribunal is satisfied that the water ingress requires urgent attention before the onset of winter whilst the existing scaffolding remains in place and that at this stage of the works it is impracticable to go through a tendering process.
12. The Tribunal therefore give dispensation from further consultation and for the need to obtain additional quotations.

13. The Tribunal makes no findings as to whether those sums are in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.
14. The Tribunal makes no further order.

D Banfield FRICS

8 December 2014

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