



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

Case reference : **CHI/24UN/LDC/2015/0040**

Applicant : **Pickwick Estates Ltd**

Representative : **F&S Property Management**

Respondents : **The Lessees**

Property : **Temple Court House, 39 Church
Street, Romsey, Hampshire SO51
8JH**

Date of decision : **10 December 2015**

Summary of decision

**The Tribunal grants dispensation from the consultation requirements
of S.20 Landlord and Tenant Act 1985.**

Background

1. This is an application for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985.
2. The Applicant advises that the proposed works are to repair the portico to the front entrance of the block.
3. The building is Listed and only one contractor has been identified to carry out the works.
4. A letter dated 23 July 2015 giving details of the estimated costs of £11,747 was sent to all lessees followed by an update on 17 August 2015. A Notice of Intention was issued on 8 October 2015. A Listed Building Application has been made.
5. Directions were made on 29 September 2015 requiring the Applicant to display a copy of the application form and these directions in a prominent position in the common parts of the property and to serve a copy of the application and Directions on each lessee with a form to be returned to the Tribunal indicating whether the application was opposed and whether an oral hearing was required.
6. Included within the hearing bundle at pages 85, 86, 87 and 90 are waivers signed by the lessees of Flats 3, 4, 1 and 2 (the owner of which is also the freeholder). None of the forms which were attached to the Directions indicating whether the lessee objected to the application or if an oral hearing was required have been returned to the Tribunal and no submissions received other than the bundle. On this basis the matter has been determined in accordance with rule 31 of the Tribunal Procedure Rules 2013.
7. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision 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

- 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 consequence 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

10. The history of this matter is set out in paragraphs 4 and 5 above. In a statement of case from Residential Management Group the property is described as Listed Grade II* and converted into 4 flats, the lessee of flat 2 also holding the freehold.

11. The portico to the entrance requires substantial repair and a contractor has proposed a schedule of works with costs estimated on a time and materials basis. It has not been possible to source a second contractor.
12. The managing agents have liaised with the Local Authority culminating in an application for Listed Building consent the result of which is awaited. It is intended that the contractor undertakes the works in 2016.
13. The lessees have been kept fully aware of the proceedings and have met the proposed contractor.

Decision

14. The managing agents have set out the case clearly having explained the difficulty in obtaining an alternative contractor for this Listed building. The lessees and the freeholder have been consulted, involved throughout and support the application.
15. 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.**
16. 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
10 December 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.