



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

Case reference : **CHI/19UC/LDC/2016/0003**

Property : **25-28 Granby Close, Weymouth,
Dorset DT4 0SR**

Applicant : **Aster Communities**

**Applicant's
Representative** : **Capsticks Solicitors LLP**

Respondents : **1) Ms Jodie Beckingham (No27)
2) Ms Anita Wingad (No 28)**

Tribunal member : **Mr D Banfield FRICS**

Date of Directions : **18 February 2016**

Summary of decision

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

**The Tribunal makes no findings as to whether the sum is in due
course payable or reasonable**

Background

1. This is an application for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985. (the Act)
2. The Applicant advises that due to problems with water penetration urgent works are required in respect of replacing the roof covering.
3. A Stage 1 S.20 Notice was sent on 21 November 2014 but due to issues raised elsewhere in the development obtaining tenders was delayed.
4. At that time there was no evidence of water penetration but following reports of water ingress from the resident of 28 Granby Close a further survey in August 2015 revealed significant deterioration of the sarking felt requiring urgent remedial works.
5. Tenders for roofing works to other properties in Granby Close had already been received and the successful tenderer, O'Brien Roofing was then instructed to carry out repairs to 25-28. The works have now been completed at a cost £29,685.96 inclusive of VAT
6. By Directions made 12 January 2016 the Tribunal required any lessee opposed to the application to complete a form and send it to the Tribunal. No objections have been received.
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.

Submissions

10. The history of this matter is set out above. The property is described as a block of four flats built to resemble a pair of semi-detached houses. They are of traditional construction with brick walls and pitched roofs covered in concrete tiles.
11. In the final paragraph of the Applicant's Statement of Case the Tribunal is asked to make an order that the sum of £29,685.96 has been reasonably incurred and is properly payable under the terms of the Respondent's lease.

Decision

12. The Statement of Case clearly sets out the circumstances leading to the decision to dispense with some of the required consultations. The contract was placed with contractors who had submitted the lowest tender for work nearby and those contractors were already working in the area. It was a pragmatic decision to take and the Tribunal are satisfied that the Lessees have not been prejudiced.
13. 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.**
14. The Applicant's Statement of Case however seeks a wider order from the Tribunal that the sums expended are properly payable by the lessees.
15. This is an application under Section 20ZA of the Act seeking dispensation from consultation and the Tribunal's Directions made it clear that the only issue was one of dispensation and that payability was not at issue. The consultations with the Lessees have been on that basis and if the Applicants had wished to widen the issue they should have made an application under section 27A of the Act and requested a variation in the Directions.
16. The Tribunal therefore 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
18 February 2016

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.