

12113



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

**Case reference** : **CHI/00ML/LDC/2016/0042**

**Applicant** : **Retirement Lease Housing Association**

**Applicant's Representative** : **Brenda Pollard, Area Manager**

**Respondents** : **The Lessees**

**Property** : **Ladies Mile Court, Ladies Mile Road, Brighton BN1 8QN**

**Date of Decision** : **19 January 2017**

**Summary of decision**

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

**The Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## Background

1. This is an application for dispensation from all or any of the consultation requirements provided by Section 20 Landlord and Tenant Act 1985. (the Act)
2. The Applicant explains that having carried out consultation, additional substantial works to rebuild a boundary wall became necessary. Informal consultation was undertaken and 15 of the 19 leaseholders positively agreed that the works could proceed. It appears that the works have now been undertaken.
3. The Tribunal made Directions on 21 October 2016 setting out a timetable for determining the matter and providing a form for tenants to complete should they object to the application or if they wished an oral hearing to be arranged. The Tribunal ordered that the Directions and form should be sent to each lessee by the Applicant.
4. No forms have been returned to the Tribunal and the matter is therefore determined on the basis of the application form and the bundle of documents provided by the Applicant.
5. **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

6. 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.

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 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**

8. At tab 7 of the bundle is the Interim Report dated 22 August 2016 from Martin Arnold Limited describing the extent of the original works upon which consultation had occurred, the additional defects discovered once works started and the proposed additional works required to remove the structural defects.

## **Decision**

9. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
10. The Tribunal accepts that these additional works were necessary, that it was not practicable to go through a formal consultation process before proceeding and that the lessees were consulted informally.

11. No objections have been received by the Tribunal and prejudice in the form referred to in the Daejan case referred to above has not been identified.
- 12. In these circumstances the Tribunal grants dispensation from the further consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in respect of the works the subject of this application.**
- 13. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

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19 January 2017

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.