



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

Case Reference : CHI/ 00MS/LD/2019/0090

Property : Telephone House, 70 High Street,
Southampton SO14 2NW

Applicant : Telephone House (Southampton)
Management Ltd

Representative : RMG

Respondent : The lessees of Flats 30,31 & 65

Representative :

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

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 12 December 2019

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work to extend the existing fire detection and alarm system comprising an upgrade of the system to include new sounder and detection circuits to 20 of the flats.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

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.
2. The Applicant explains that following investigations carried out on behalf of the management company fire safety works are required. Hampshire Fire and Rescue have served two enforcement notices one of which is outstanding and is the subject of this application.
3. The work proposed is the extension of the existing fire detection and alarm system comprising an upgrade of the system to include new sounder and detection circuits to 20 of the flats.
4. The Tribunal made Directions on 5 November 2019 indicating that the application would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. Attached to the directions was a form for the Respondent to indicate whether they agreed with or objected to the application. It was further indicated that if the application was agreed to or no response was received the lessee would be removed as a Respondent.
5. Three forms was received in support of the application. Three objections were received two of which also gave reasons for their objection. It is understood that contrary to the Tribunal's Directions these were not copied to the Applicant.
6. As indicated above only those lessees who objected to the application remain as Respondents. The Applicant sent them a copy of the hearing bundle to which I now refer on 11 December 2019.
7. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**
8. References to page numbers in the bundle are shown as[*]

The Law

9. 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.

10. 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
 - a. 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.
 - b. 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.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. 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).
 - f. 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.
 - g. 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.
 - h. 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.
 - i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

11. On 30 August 2019 Hampshire Fire and Rescue served two Enforcement Notices one of which required specified works to be carried by 1 December 2019 [86]. The works identified relate to the alarm system (Item 1) and doors (Item 2). A report by Design Fire Consultants dated 2 October 2019 [91] identifies areas requiring remedial action and then specifies the action to be taken.
12. RMG sent Lessees a letter dated 26 September 2019 [161] enclosing a Notice of Intent as required by Section 20 of the 1985 Act. On 22 November 2019 a second letter was sent [176] explaining that Hampshire Fire and Rescue required the work to be carried out urgently and in consequence an application was being made for dispensation from the consultation requirements.

13. Two letters of objection were received the contents of which may be summarised as;
 - a) The lessees should have been informed of the contents of the Enforcement Notices
 - b) Time should have been allowed for consultation.
 - c) The managing agents are incompetent
 - d) Value for money is not obtained
 - e) Disregard for personal data

Determination

14. 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.
15. The Enforcement Notice dated 30 August 2019 required the remedial works to be carried out by 1 December 2019. The Notice of Intent served on 26 September 2019 referred to the Notice at paragraph 3 [163].
16. It is clear that to meet the timetable set by the Notice there was insufficient time for full consultation to take place. It may have assisted Lessees in understanding the urgency if the contents of the Enforcement Notices had been made available but this is not relevant as to whether dispensation should be given.
17. The objections have been noted but I am not satisfied that they demonstrate the type of prejudice referred to in the Daejan case referred to in paragraph 10 above.
- 18. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work to extend the existing fire detection and alarm system comprising an upgrade of the system to include new sounder and detection circuits to 20 of the flats.**
- 19. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
12 December 2019

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 appeal is seeking.