FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/ 24UL/LDC/2018/0106
Property	**:**	Alexander House, 50 Station Road, Aldershot GU11 1BG
Applicant	**:**	Accent Housing Limited
Representative	**:**	Trowers and Hamlins LLP
Respondents	**:**	Ms Quigley (Flat 40) Ms Campbell (Flat 44)
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	**:**	Mr D Banfield FRICS
Date of Decision	**:**	14 March 2019

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to the three pumps undertaken in January and February 2017. bundle.

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 in January 2017 the sump pumps at the property failed leaving some of the flats without water and others with low water pressure at peak times. Following temporary repairs three replacement pumps were supplied in an improved location together with the installation of an alarm panel and improvements to the bypass system.

3. Directions were made on 18 December 2018 requiring the Applicant to send a copy of the application and the Directions to each Lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.

4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents

5. Two lessees have submitted statements of case opposing the application. As indicated in Directions the remaining lessees are therefore removed as Respondents.

6. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.

7. The only issue for the Tribunal is if 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.**

The Law

8. The relevant section of the Act reads as follows:

   20ZA Consultation requirements:
   a. (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

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

Evidence

Applicant

10. In their statement of case the Applicant explains that the pump room and its contents are part of the Building Common Parts and as such are the responsibility of the landlord to maintain. On or around 24 January 2017 two sump pumps failed causing flooding in the pump room. The property was left with an inadequate water supply, some flats having no water and others, low pressure.

11. The water was removed and attempts to repair the pumps attempted. The three pumps were stripped down, and one was then temporarily rebuilt used salvaged parts.

12. More permanent repairs were undertaken on 20 and 24 February 2017 comprising;
    - Supply and install 3 pumps

- Relocate pumps onto a plinth to avoid future flooding
- Installation of a panel alarm
- Increase size of bypass system.

13. The works were carried out by contractors who were familiar with the building.

14. Due to the urgency of the works it was not possible to carry out Section 20 Consultations. The lessees were sent letters on 26 and 27 January with a further letter on 1 February following a meeting with leaseholders to advise them of the situation and by a letter of 15 February 2017 that the works were to be carried out.

Respondents

15. Ms Quigley in her statement of case objecting to the application states that;

- Although the landlord referred to only requiring payment of £250 pending determination of this application invoices were sent for £634.38 each.
- The time taken to submit the application is unreasonable and has left her with financial uncertainty.
- The landlord refers to regular servicing being carried out. However, despite requests no details have been provided to the lessees.
- The contractor has not been reliable as there have been further problems with the supply resulting in loss of water on five dates in 2018 and the further replacement of a pump in November 2018.
- She has been caused financial prejudice by the use of the chosen contractor as lessees did not have the opportunity of proposing alternative contractors.
- S.20 consultations could have been carried out following the initial repairs which restored the water supply. The new pumps were not installed until a month after the initial repairs. This has caused her prejudice.
- Costs not relevant to the original emergency are included in the application.
- It is agreed that the replacing the pumps was necessary but that installing an alarm panel and changes to the bypass system are new features and should not be charged.
- The invoice issued on 21 August 2017 did not contain a "Summary of Tenants rights and obligations"

16. Ms Campbell in her statement of case says that;

- The works may not have been necessary and not an emergency if the pumps had been maintained correctly.
- The work took several weeks and was not therefore an emergency.
- The works are to a poor standard.

- Some works were improvements not repairs.
- The length of time in applying for dispensation has caused financial disadvantage.
- Accent have stated that if dispensation is disallowed rents will rise to cover the expenditure and where the full demand has been paid any interest received will be retained by the landlord.

17. Details are given of ;
    - Accent's failure to act on maintenance recommendations.
    - Further repairs were carried out following the pump replacement and water has failed at least 6 times.
    - Many residents have paid the full amount charged and it was only agreed in October 2018 that only £250 was payable without dispensation. Until that time residents were chased for full payment.

Applicant's Reply

18. No payment has been received from Ms Quigley and the invoice in the full amount was made to satisfy the requirements of Section 20B (that demands had to be submitted in a specified time). The outstanding amounts were not chased by Accent and any delay in submission of the application has not caused prejudice.

19. The pumps were regularly serviced and in 2016 servicing was carried out in March and September with emergency visits/works then carried out in January 2017.

20. Details of visits dealing with some minor problems in 2017 and 2018 are given.

21. The supply failure was received on 24 January 2017 and the final emergency repair was on 24 February, insufficient time for consultation to take place. The January 2017 repair was not intended to remedy the problem for any length of time but were to allow for parts to be received.

22. It would not be satisfactory to have used two contractors, one for emergency repairs and then one appointed after consultation. Costs would have been increased.

23. The cost of providing the panel alarm will be deducted from the sums claimed.

24. Ms Quigley's remaining points are irrelevant to a dispensation application although it is the Applicant's standard practice that a Summary of Rights and Obligations is sent with demands and there is nothing to indicate that this is not the case .

25. Regarding Ms Campbell's statement of case

- Leaseholders were kept aware of what was happening by the various letters attached to their statement of case..
- No payments towards the invoice for emergency works has been made by Ms Campbell. Emergency work being kept separate from day to day service charges. There will be no impact on anyone's credit rating.
- The applicant is unaware of any representations regarding an increase in rents which can only be increased in line with the terms of the shared ownership leases.
- Other matters raised by Ms Campbell are covered by answers to Ms Quigley's case.

Determination

26. 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.

27. The test the Tribunal must apply is whether by not consulting in accordance with S.20 the lessees have been prejudiced. The Daejan case referred to in paragraph 9 above makes no distinction between emergency and non-emergency works and simply looks at the question of prejudice.

28. The determination of this application solely relates to dispensing with consultation and specifically makes no determination as to whether the amounts charged are reasonable, properly demanded or indeed if the work was required. The only question I must ask is whether, if consultations had been carried out, the outcome would have been any different.

29. The Respondent's points regarding whether proper maintenance has been carried out and the quality of the repairs, whilst perfectly proper in an application under Section 27A to determine whether the costs had been reasonably incurred are not relevant to this application.

30. Likewise, the manner in which payments may have been demanded and indeed whether payments have been made are not relevant to whether dispensation should be given.

31. These were works requiring specialist contractors where a prior knowledge of the building may have been of some advantage and I am not satisfied that consulting the lessees would have resulted in any different outcome.

32. As such I find that the lessees have not demonstrated the type of prejudice referred to in the Daejan case referred to above and therefore grant the dispensation requested.

33. been prejudiced by the failure to consult and have been whether The Tribunal notes the Respondents' objections relating to the identity of the builder and the need for competitive quotations however these are matters still capable of challenge as and when a service charge demand is received and as such are not persuasive with regard to this application.

34. Although the application refers to both internal fire safety works and external repairs the specification [15] is in respect of fire safety only.

35. Passing reference to water ingress is made by Mr Tarling [14] but no further information is provided.

36. The Notice of Intention dated 6 July 2017 also fails to refer to any external repairs, only referring to fire safety works to the common parts.

37. In view of the above the Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to the three pumps undertaken in January and February 2017. bundle.

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

D Banfield FRICS
14 March 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.