



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

Case Reference : CHI/23UC/LDC/2020/0038

Property : 1, 2, & 3 Stonesfield Close, Southrop,
Gloucestershire, GL7 3QF

Applicant : Cirencester Housing Limited

Representative : Maureen Margrie

Respondent :
1. Debbie Wyatt
2. Jeremy Hughes, Yvonne Hughes &
A Hughes

Representative : n/a

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

Tribunal Member(s) : D Banfield FRICS Regional Surveyor

Date of Decision : 26 October 2020

Dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to the sewage treatment works.

In granting dispensation in respect of the Application 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 it owns the freehold of 3 properties on an estate of 8 properties, which it rents on what are now assured tenancies to the tenants. The works in question have already been undertaken on an urgent basis and consisted of emergency works to a small sewage treatment works serving the 8 properties instructed to be undertaken by the management company for the estate. The Applicant is liable for a share of the cost of the works and the Respondents' tenancy agreements include terms with regard to payment of variable service charges.
3. Directions were made on 22 June 2020 and subsequently re-issued on 25 August 2020 requiring the Applicant to serve a copy of the Application and the Tribunal's directions on the tenants.
4. Attached to the Directions was a form for completion by the tenants indicating whether they agreed with the application and whether they objected to the matter being determined without an oral hearing.
5. It was also stated that those tenants who agreed to the application or failed to return the form would be removed as Respondents.
6. Objections were received from the tenants of Nos 1 and 3 and they therefore remain as Respondents.
7. No requests have been received for an oral hearing and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
8. An electronic bundle has been supplied upon which this determination is made.
9. The tenancy agreement in respect of No 1 does not include the Schedule referred to as listing the services to be received. It is assumed that this is an oversight in the preparation of the bundle and it has therefore been assumed that the services are identical in all three cases.
10. Although the Applicant has not submitted a Statement of Case or a Response to the Respondents' objection the Tribunal nevertheless considers that sufficient information is contained in the Application form to enable it to make its determination.
11. 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

12. 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.

13. 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.

Submissions

14. The Applicant's submissions are taken as the explanation given in paragraph 2 above.

15. Ms Wyatt, the tenant of No 1 has provided a statement dated 27 August 2020, which the tenant of No 3 adopts and in which she refers to:

- The excessive cost of repairs should have been better planned for
- A procedure for emergency failure should have been implemented
- A sinking Fund should have been established
- The landlord should communicate to the Management Company that the system is not fit for purpose
- This application is only due to the Applicant's lack of foresight
- Statutory Consultation is essential when dealing with social housing tenants

Determination

16. 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.

17. The case of Daejan v Benson referred to above provides guidance to the Tribunal when considering the issues raised by all parties.

18. As indicated in the Tribunal's Directions and accepted by Ms Wyatt the sole issue before it is whether Lessees have been prejudiced by the lack of consultation. No determination is made as to whether the costs are reasonable or recoverable, that being a matter for an application under S.27A Landlord and Tenant Act 1985.

19. The matters raised by Ms Wyatt may be relevant to an application under S.27A but with regard to this application there has been no suggestion as to how the Applicant should have proceeded given the situation in which they found themselves. Likewise, there has been no evidence that costs have been increased due to the lack of consultation.

20. For these reasons dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to the sewage treatment works.

21. In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

D Banfield FRICS
26 October 2020

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 RPSouthern@justice.gov.uk. 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.