



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

Case Reference : CHI/28UQ/LDC/2021/0021

Property : Mount Ephraim Court, Molyneux Park Road, Tunbridge Wells, Kent TN4 8DH

Applicant : Mount Ephraim Court Limited

Representative : Keren Dolan of
Alexandre Boyes Property Management Company

Respondents : The leaseholders of 16 Flats

Representative :

Type of Application : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985

Tribunal Member(s) : Judge Tildesley OBE

Date and Venue of Hearing : Determination on Papers

Date of Decision : 26 March 2021

DECISION

The Application

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 explained works were required to areas of the roof, gutters and brickwork to rectify issues with leaks into a few flats. Two quotes have been obtained and a surveyor has already put together a schedule of works. The resident management company is keen to get these works done as soon as possible to avoid further damage.
3. The Application for dispensation was received on 17 February 2021.
4. On 19 February 2021 the Tribunal decided that the matter was urgent, it was not practicable for there to be a hearing and it was in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
5. The Tribunal directed the Applicant to serve the application and directions on the Respondents, and to confirm that it had done that by 24 February 2021. The Applicant failed to do this. The Tribunal followed up the matter with the Applicant's representative who informed the Tribunal that directions would be sent to all leaseholders on 1 March 2021.
6. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 3 March 2021 indicating whether they agreed or disagreed with the Application.
7. The Tribunal received no responses from the Respondents. The Tribunal had heard nothing further from the Applicant's representative.
8. On 20 March 2021 the Tribunal requested clarification from the Applicant's representative who stated that the directions had been sent and no representations had been received from the Respondents.
9. The Tribunal held reservations about proceeding with the application. The Applicant's representative has not treated these proceedings with the seriousness that they merit. The information supplied to the Tribunal to support the application has been minimal. For example the Applicant has not supplied details of the quotations, the programme of works and the steps that it has taken to ensure that the costs to the Respondents are not excessive. The Tribunal had the power to strike out the Application because of the Applicant's failure to comply with directions. The Tribunal has on balance decided to proceed to a determination on the basis that it is a residents' management company

and the works are urgent. The Tribunal, however, if it grants the application has the power to impose conditions to the grant.

Determination

10. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
11. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
12. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
13. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
14. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the

amount claimed as service charges to compensate the leaseholders fully for that prejudice.

15. The Tribunal now turns to the facts. The Tribunal is satisfied that it is necessary to carry out the repairs as an urgent measure to prevent further damage by water ingress to the property. The Tribunal holds that the Applicant could not wait to undertake a full consultation exercise before it carried out repairs. The Tribunal observes that no leaseholders have responded to the Application.
16. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.
17. **The Tribunal, therefore, dispenses with the consultation requirements in respect of the urgent works to the roof, gutters and brickwork.**
18. **This grant is subject to the condition that the Applicant supplies a copy of the decision to the leaseholders and confirmed by no later than the 9 April 2021 to the Tribunal that it has served the decision on them, and the method and date by which the service was achieved. If the Applicant fails to comply with this condition the dispensation does not take effect.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.

Due to the Covid 19 pandemic, communications to the Tribunal MUST be made by email to rpsouthern@iustice.gov.uk. All communications must clearly state the Case Number and address of the premises.