

12095



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

**Case reference** : **CHI/21UD/LDC/2016/0043**

**Applicant** : **Eversfield Property (Holdings)  
Limited**

**Applicant's  
Representative** : **Eversfield Property Management  
Limited**

**Respondents** : **Mr M Andrews  
Ms R Sharkey  
Mr T Dodd and Mr S Cooper  
Ms M Still  
Mr C Van Tonder  
Mr A Cahill  
Mr B Fox**

**Property** : **26 Eversfield Place,  
St Leonards on Sea, East Sussex  
TN37 6BY**

**Date of Decision** : **25 November 2016**

**Summary of decision**

**The Tribunal grants dispensation from the further consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in respect of the works to Flats 1B and 1C and which are identified as items 3.01 -3.07 and 4.01 – 4.11 of the specification.**

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

## Background

1. This is an application received 29 September 2016 for dispensation from all or any of the consultation requirements provided by Section 20 Landlord and Tenant Act 1985. (the Act)
2. The Applicant advised that works were required to the building which is an HMO and that a surveyor had identified several items requiring attention including works to Flats 1C and 1B. Flat 1C is currently vacant and the work needs to be carried out before it is re-occupied. Flat 1B is subject to an Improvement Notice requiring works to be completed before 1 December 2016.
3. The Tribunal made Directions on 29 September 2016 setting out a timetable for determining the matter and providing a form for lessees to complete should they object to the application or if they wished an oral hearing to be arranged. The Tribunal sent copies to each of the lessees identified.
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. Attached to a letter from the Applicants dated 10 November 2016 were tenders from two contractors, a tender analysis for a building surveyor and a copy of the Improvement Notice from Hastings Borough Council in respect of deficiencies at Flat 1B.
9. In a witness statement by Arthur M Cahill, a Director of the Applicant Company he refers to the Improvement Notice served on the lessee of Flat 1B which identified the presence of dampness and dry rot.
10. He said that a Stage IV Notice of Intention to Carry out Works was served on all service charge payers on 26 September 2016 together with a detailed specification prepared by Lee P Goubert BSc (Hons) MSc Grad CABE. A Statement of Estimates was sent to leaseholders on 11 November 2016.
11. The works in respect of Flat 1B were identified as items 4.01 – 4.11 of the specification.

12. Mr Cahill then refers to Flat 1C where dry rot has been identified and where urgent remedial works need to be carried out while the flat is vacant.
13. The works to Flat 1C are identified as items 3.01 – 3.07 of the specification.

## **Decision**

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 Tribunal accepts that works to these two flats is required and that particularly in respect of Flat1B the time constraint imposed by the Improvement Notice renders full consultation impractical.
16. The lessees have been served with Notices of Intention and of Estimates and are aware of the application for dispensation from the further requirements of S.20 of the Act. No objections have been received and prejudice in the form referred to in the Daejan case referred to above has not been identified.
- 17. 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 to Flats 1B and 1C and which are identified as items 3.01 -3.07 and 4.01 – 4.11 of the specification.**
- 18. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

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25 November 2016

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.