

12478



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

**Case Reference** : CHI/00HB/LDC/2017/0062

**Property** : Bradley House, St Stephens Avenue,  
Bristol BS1 1YL

**Applicant** : Fairfield Rents Limited (FHR)

**Representative** : Urbanpoint Property Management Limited

**Respondents** : Bradley House (Bristol) Management  
Company Limited (BHMC)  
24 Leaseholders

**Representative** : Crown Leasehold

**Type of Application** : To dispense with the requirement to  
consult lessees about repairs

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Directions** : 12 October 2017

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DECISION

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1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from some or all of the consultation requirements imposed on the landlord by Section 20 of the 1985 Act with regard to urgent works required to carry out a pump replacement and repair of sewerage pipes.
2. The Tribunal made Directions on 7 September 2017 which were copied to the parties together with a form for the Respondents to complete as to whether they supported the landlord's application, whether the Tribunal may decide the matter on written submissions and if a hearing was required, whether they would attend.
3. Responses were received from the lessees of 7 flats, 6 of whom supported the application. One lessee objected and requested an oral hearing, she indicated however that she would not attend.
4. In view of the need to make an early determination and that the only person objecting to a determination on the papers is unable to attend an oral hearing the Tribunal will determine the matter on the papers received in accordance with Rule 31 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
5. It is clear from the application that there is a dispute as to the party who has responsibility for the works and who will eventually be obliged to meet the cost. However, the only issue for the Tribunal is whether or not 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 or which party is liable to meet those costs.**

## 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. The Applicant says that raw sewage is entering the basement of the commercial premises beneath the building and that the management company Crown Leasehold Management (CLM) on behalf of Bradley House (Bristol) Management Company Ltd (BHMC) has taken no action.
9. Counsel's opinion has been obtained that places responsibility on BHMC although there is a covenant allowing FHR to take over the management of the matter until its conclusion.
10. A letter from Trent Drains dated 28 September 2017 suggests that the flats' waste does not flow through the pump but exits directly to the main drain.

11. A quotation from Mawdsleys for upgrading the pumps and various invoices are provided.
12. Section 20 Notice of intention to carry out works were sent to leaseholders on 6 September 2017.

### **Decision**

13. 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.
14. **The responsibility for the party with the obligation to arrange for the works to be carried out and the parties responsible for meeting those costs is far from clear and the Tribunal makes no determination on this point.**
15. The Tribunal's determination under this application is simply whether dispensation from the consultation requirements of S. 20 Landlord and Tenant Act 1985 may be given. In the circumstances of this case where raw sewage is entering the premises it is clear that remedial action needs to be taken without the delay necessarily occasioned by going through the full consultation procedures.
16. No prejudice to the leaseholders as referred to in paragraph 7 above has been identified.
17. The Tribunal again emphasises that it has not made any determination as to whether the Respondent lessees are liable for the costs involved
18. **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 solely in respect of the pump replacement and repair of sewerage pipes.**
19. **In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
12 October 2017

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.