

10774



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

**Case Reference** : CHI/00HN/LDC/2014/0060

**Property** : Latitude West, 37 St Catherine's Road,  
Bournemouth, BH6 4AG

**Applicant** : 37 St Catherines Road Management  
Company Limited

**Representative** : Napier Management Services Limited

**Respondent** : EPFL Essex Property Finance  
Mr & Mrs Clay  
Lancer Scott Limited  
Mr D B Wright & Mrs M Colqhohoun  
Wright  
Mr K Saunders  
Mr Townend  
Mr & Mrs B Quinn  
Mr G Spencer & Mr Townend  
Mr A J Gore

**Representative** :

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

**Tribunal Member** : Mr D Banfield FRICS  
Mr J Mills

**Date and Place of  
Hearing** : 4 March 2015 at Court 8, Bournemouth  
County Court

**Date of Decision** : 12 March 2015

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DECISION

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## **Summary of Decision**

### **The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**

#### **Background**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from some of the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of repairs to the property.
2. The property comprises a block of 12 flats 3 of which had been converted from garages some time ago and which had been the subject of major refurbishment in 2013/2014. In the summer of 2014 the lessee of Flat 2 reported a problem with damp in his ground floor flat and investigations were carried out.
3. The contractor who had carried out the refurbishment works was approached but it was subsequently determined that the problem could not be related to works carried out by him. A report was commissioned from Greenward Associates Chartered Surveyors who on 17 November 2014 recommended the installation of a French drain and associated works. The report was referred to BCB surveyors who had been involved with the refurbishment works. BCB disagreed with the findings and recommended the installation of a damp proof course.
4. On 15 December 2014 an application was made to the Tribunal for dispensation from all or part of the consultation requirements of Section 20 and on the following day a Notice of Intention to Carry Out Works was sent to the lessees describing the works proposed as *Install a DPC vertical wall membrane system and reinstatement of internal plaster-board finish and associated electrical and carpentry works.*
5. After further discussions however it was decided that the scheme to install a DPC was flawed and that the French drain solution was preferred. Quotations were therefore obtained from Colonial Contractors for £6,220 and Greendale Construction Limited for £4,875.
6. A Notice of Estimates in relation to Proposed Works was then served on 23 February 2015 giving the total cost of the works including Napier's fees and VAT as £6,150 exclusive of professional fees and internal decorations to Flat 2. Observations were invited but due to a clerical error the notice gave the date for the end of the consultation period as 28 April 2015 rather than the correct 28 March 2015.

7. Copies of the Tribunal's Directions including a response form were served on all lessees and 4 have responded in favour. No objections having been received.
8. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

## The Law

9. 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.*
10. 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.

## **The Evidence and Decision**

11. The Tribunal inspected the property prior to the hearing on the morning of 4 March in the company of representatives of Napier Management Services Limited and Mr K Saunders the lessee of Flat 2. We noted signs of the investigation works carried out and Mr Saunders demonstrated that damp was present by use of a moisture meter.
12. At the Hearing later that morning Ms Kim Head attended, accompanied by Mr Ben Hume both from Napier.
13. Ms Head explained the history of the development and the background to the current problem. She explained that she had made the application to the Tribunal in case any delays had occurred with the consultation procedures but accepted that the Tribunal's decision and the correct expiry of the consultation period were likely to be close to each other. She said that Mr Saunders had been prevented from letting the property for holiday lets which was his usual practice.
14. The Tribunal in applying the legal principles cited above, notes that nothing has been received from the Respondents that purports to identify any prejudice to them.
15. The Tribunal is satisfied that this is an uncontested application in respect of the factual burden of identifying prejudice. However the Tribunal will still apply the relevant legal principles to the evidence before it, mindful that Parliament has intended dispensation to be an exception to consultation.
16. The Tribunal is satisfied that the problem first reported in the summer of 2014 requires attention. The delay between this notification and obtaining quotes is explained by the need to investigate with the original contractors and a disagreement between the surveyors consulted.
17. We are satisfied that to the lessee of Flat 2 this is an urgent matter requiring attention so that he may return the property to the letting market. We have some difficulty however when the difference in time taken to follow the required consultation process and to seek dispensation is very similar.
18. However, we accept that although the consultation process appears to have run smoothly that may not have been the case and that

dispensation may have been obtained a month or so before full consultations had been concluded.

19. No objections have been received, 2 quotations have been obtained, the lessees have been kept informed and no question of prejudice to the lessees has been raised.
20. In the light of the evidence received the Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.
21. The Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS  
12 March 2015

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