FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UC/LDC/2019/0025
Property	**:**	36 & 38 Wick Farm Road, Wick, Littlehampton BN17 7HL
Applicant	**:**	Arun District Council
Representative	**:**	Janet Ashby, Leasehold Manager
Respondents	**:**	
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	**:**	Mr D Banfield FRICS
Date of Decision	**:**	1 July 2019

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the **repairs to the chimneys.**

In granting dispensation in respect of part 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 (the 1985 Act) from the consultation requirements required by Section 20 of the 1985 Act.

2. The Applicant explains that following the report of damp from the lessee of No 36 a contractor reported that the two chimney pots were cracked, there were no pepper pot caps and the flaunching was defective and loose. The defects could cause the chimney pots to fall and cause harm. The works were carried out on 22 February 2019.

3. The Tribunal sent Directions to each Lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.

4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents

5. One reply was received agreeing to the application and the lessees are therefore removed as Respondents as previously indicated.

6. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.

7. 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

8. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

a. (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.

9. 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

b. 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.

c. 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.
d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
f. 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).
g. 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.
h. 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.
i. 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.
j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

10. At tab I of the bundle are photographs of the defective chimneys and at Tab J are photos of the same chimneys now repaired.

11. At Tab B is a letter to leaseholders dated 21 March 2019 indicating that an application to the Tribunal was to be made attached to which was an invoice dated 26 February 2019 in respect of the work carried out.

Determination

12. The photographs provide evidence of the defective chimneys requiring repairs and it is accepted that the works were urgent. No lessee has objected, and no evidence has been submitted identifying the type of prejudice referred to in paragraph 9 above. In these circumstances, I am prepared to grant the dispensation required.

13. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the chimneys.**

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

D Banfield FRICS 1 July 2019

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 appeal is seeking.