



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

**Case Reference** : CHI/21UG/LDC/2020/0068

**Property** : 70 Sea Road, Bexhill-on-Sea, East Sussex  
TN40 1JL

**Applicant** : Southern Land Securities Limited

**Representative** : Together Property Management (email:  
maintenance@togetherproperty.co.uk)

**Respondent** :

**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** : D Banfield FRICS Regional Surveyor

**Date of Decision** : 27 October 2020

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**DECISION**

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**Dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to replace a corroded beam as referred to in Angell Thompson's report dated 11 August 2020.**

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

**The Applicant is to send a copy of this determination to each of the Lessees who contribute to the service charge.**

## **Background**

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 Act.
2. The Applicant explains that urgent works are being undertaken to replace a structural steel beam which was discovered, in the course of other works, to be seriously corroded and compromising the structural integrity of the building.
3. The only issue for the Tribunal is whether 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.
4. On 30 September 2020 the Tribunal made Directions that the application was to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects in writing to the Tribunal.
5. The Applicant was required to send a copy of the Application and the Tribunal's Directions to each lessee and to confirm to the Tribunal that it had done so.
6. Attached to the Directions was a form for the Lessees to indicate to the Tribunal whether they objected to or agreed with the Application and whether an oral hearing was requested.
7. It was indicated that lessees who agreed with the application or did not return the form would be removed as respondents.
8. No objections have been received and the lessees have therefore been removed as respondents.
9. There has been no call for an oral hearing and the application is therefore determined on the papers received.

## **The Law**

10. 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.

11. 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
  - a. 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.
  - b. 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.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. 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).
  - f. 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.
  - g. 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.
  - h. 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.
  - i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **Submissions**

### **The Applicant's case**

12. The bundle confirms the situation described in paragraph 2 above. A description of the works required are contained in the report from Angell Thompson dated 11 August 2020.

## **Determination**

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 case of Daejan v Benson referred to above provides guidance to the Tribunal when considering the issues raised by all parties.

15. The Lessees do not object to the application and no evidence of prejudice as referred to in the Daejan case has been identified.
16. **For these reasons dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to replace a corroded beam as referred to in Angell Thompson's report dated 11 August 2020.**
17. **In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
18. **The Applicant is to send a copy of this determination to each of the Lessees who contribute to the service charge.**

D Banfield FRICS  
26 October 2020

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 RPSouthern@justice.gov.uk. 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.
19. 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 se