



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

**Case Reference** : CHI/18UD/LDC/2020/0058

**Property** : 35 High Street, Crediton, EX17 3AE

**Applicant** : Bridge House (Taunton) Limited

**Representative** : Greenslade Taylor Hunt

**Respondent** : Sovereign Housing Association

**Representative** : N/A

**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** : 26 October 2020

---

**DECISION**

---

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

**In granting dispensation in respect 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 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that the property comprises a commercial unit on the ground floor occupied by Done Brothers and 5 flats above all leased under one leasehold agreement by the Respondent. The major works had not been commenced at the time of the application to the Tribunal on 10th August 2020.
3. However, the qualifying works are stated to be required to remedy water ingress from the roof into the properties below, reported by the Respondent to the Applicant, although the exact cause had not been ascertained scaffolding was required to access the roof and were hopefully start in a few weeks' time from then. The Applicant further states that following discussion with Respondent, it has been agreed that the Applicant apply for dispensation and that the Respondent complete the required works, considered the best way to comply with section 20 requirements and to complete the works promptly, avoiding further damage.
4. 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.
5. Having considered the application the Tribunal is satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
6. The application is to be determined on the papers.
7. On 21 September 2020 the Tribunal sent a copy of the application and Directions to the Respondent together with a form to indicate whether they agreed or objected to the application.

## **The Law**

8. 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.

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
- 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**

10. The application shall stand as the Applicant's case.

### **The Respondent's case**

11. The Respondent has confirmed that it does not object to the application.

## **Determination**

12. 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.
13. The case of *Daejan v Benson* referred to above provides guidance to the Tribunal when considering the issues raised by all parties.

14. The Respondent does not object to the application and no evidence of prejudice as referred to in the Daejan case has been identified.
15. For these reasons dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to the roofs.
16. **In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

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.

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