



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

Case Reference : CHI/21UD/LDC/2020/0111

Property : 21-36 Queens Apartments Robertson
Terrace, Hastings TN34 1JN

Applicant : Peter Stravi & David Gould

Representative : Oakfield PM Ltd

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 : 23 February 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works referred to in the specification by IKO issued on 26/11/20 entitled Queens Apartments – Office Roof Area.

Dispensation is granted on the condition that more than one tender is sought and that the most competitive tender accepted.

In granting dispensation, 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 the Lessees.

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 explained that “THE ROOF IS NOW BEYOND REPAIR AND THIS IS RESULTING IN CONTINUOUS WATER INGRESS THROUGHOUT THE PROPERTY. TEMPORARY REPAIRS ARE NO LONGER SUBSTANTIAL TO MAKE THE PREMISES WATER TIGHT. THERE IS A NUMBER OF TENANTS WHO ARE DISTRESSED AND NO LONGER WISH TO CONTINUE THEIR TENANCIES AT THE PROPERTY DUE TO THIS.”
3. The application contained a report from Standen Associates Ltd dated 16 December 2020 from which it appears that the works for which dispensation is required is the replacement of the flat roofs above the commercial areas.
4. Also attached was a specification by IKO issued on 26/11/20 entitled Queens Apartments – Office Roof Area. Both reports refer to the previous lack of maintenance and the previous repair attempts.
5. The Tribunal made Directions on 6 January 2021 indicating that the Tribunal considered that the application was suitable to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
6. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
7. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
8. Three lessees responded indicating that they agreed with the application and have been removed as Respondents in accordance with paragraph 7 above. One of the lessees who agreed with the application indicated that it was conditional upon the tender process involved more than one independent and professionally qualified contractor.
9. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.
10. The only issue for the Tribunal is whether 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

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

S.20 ZA Consultation requirements:

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.

12. 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
- i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. 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).
 - vi. 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.
 - vii. 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.

- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 13. The Applicant has supplied a bundle of evidence in support of the application. It contains the reports referred to in paragraphs 3 and 4 above, a typical lease and letters dated 12 January 2021 to each lessee as referred to in paragraph 6 above. In an email dated 16 February 2021 in answer to an enquiry from a lessee it was stated that tenders would be sought from more than one contractor and the most competitive quotation accepted.

Determination

- 14. 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 those requirements.
- 15. No objections have been received and therefore no evidence of prejudice has been submitted.
- 16. The Tribunal accepts that these works should not be unduly delayed by the need to carry out consultation and in the absence of any objection I am prepared to grant the requested dispensation subject to the condition that the assurance given regarding seeking more than one tender is adhered to.
- 17. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works referred to in the specification by IKO issued on 26/11/20 entitled Queens Apartments – Office Roof Area.**
- 18. **Dispensation is granted on the condition that more than one tender is sought and that the most competitive tender accepted.**

19. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
20. **The Applicant is to send a copy of this determination to the Lessees.**

D Banfield FRICS
23 February 2021

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.