



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

Case Reference	: CHI/45UF/LDC/2021/0092
Property	: Westminster House, Station Road, Pulborough, West Sussex RH20 1AH
Applicant	: Property Fusion
Representative	: ---
Respondents	: Denise Hoilette (Flat 1) Alex Kustov (Flat 3)
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(s)	: D Banfield FRICS Regional Surveyor
Date of Decision	: 11 November 2021 without a hearing in accordance with rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11.

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works listed in the letter dated 27 August 2021 from Iain Staines BSc (Hons) Assoc RICS of Focus Consulting.

This dispensation is upon the following conditions;

- The work will be supervised by Mr Staines and completed to his satisfaction.**
- The costs incurred by the applicant in making this application shall not be recovered from the lessees by way of service charge or any other means.**

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. By an application dated 6 October 2021 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 there is severe water ingress to Flat 2 causing damage and making it uninhabitable. Details of the work to be undertaken were not provided. It is understood that two quotes have been received and a Notice of Intention issued however these documents have also not been provided.
3. The Tribunal made Directions on 13 October 2021 indicating that the Tribunal considered that the application was suitable to be determined on the papers without a hearing in accordance with rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11.
4. 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 and Tribunal.
5. It was indicated that those lessees who agreed to the application or failed to respond would be removed as Respondents.
6. Two lessees responded indicating that they agreed with the application and as indicated above those lessees have been removed as respondents. The lessee of flat 3 objected but has not sent reasons for that objection to the Tribunal. The lessee of Flat 1 has objected and provided her reasons which will be referred to below.
7. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the parties' positions were clear and provide sufficient information for the Tribunal to make its determination.
8. 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

9. 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.

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
- 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

- 11. The reason for the application is set out in paragraph 2 above. In support the Applicant has provided a copy of the letter dated 27 August 2021 from Iain Staines BSc (Hons) Assoc RICS of Focus Consulting in which the cause of the issue is identified as a combination of the doors set below the damp proof course, poor tray detailing and construction and ineffective aco drainage. A summary of the proposed works is then provided. Mr Staines says that he has considered an alternative scheme with external tanking which would be less disruptive to the flat owner but rejected it in favour of what he describes as the “most robust solution”
- 12. In her objection dated 19 October 2021 Ms Hoilette refers to her shock in receiving the tribunal's documentation and that she shares the occupiers of flat 2's concerns that the design and construction is not fit for purpose. She is concerned about the disparity of the quotes received and considers it “wholly wrong for the leaseholders to be forced to meet any of the costs of this terrible construction”
- 13. Ms Hoilette is concerned that the builders/developers who failed to understand the water issues have now got it right and has no confidence in the developers/freeholders design and building skills. She is of the opinion that “an experienced qualified surveyor is needed” and “I am sure the Surveyor Mr Staines could do that”
- 14. In a response the Applicant refers to the numerous visits to Flat 2 to try and rectify the problem and the works carried out on 1 June 2021. The application to the Tribunal for dispensation is due to the lessees not agreeing to bypass the section 20 consultation which is being run in parallel.
- 15. To wait further will only cause more water ingress and as the contractors, Crowding Bricks, have not been confirmed as the original contractors who converted the building her objection on those grounds is not understood. Two contractors nominated by Ms Hoilette have been contacted one of whom declined to tender. Any dispute over liability for the cost of the works should be taken up with the freeholder.

Determination

16. 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.
17. In her objection Ms Hoilette agrees that the work is urgent and expresses confidence in Mr Staines the Surveyor whose report is relied upon by the Applicant. Further objections are made as to the manner of the application to the Tribunal and whether the leaseholders should be required to meet these costs rather than the freeholder.
18. The issue of cost is not a matter for the Tribunal under this application. If any lessee wishes to dispute their liability an application under S.27A of the Landlord and Tenant Act 1985 may be made.
19. Until the Tribunal requested a copy of Mr Staines' report the work for which dispensation was sought had not been indicated. For the purpose of this determination the Tribunal presumes that it is those works listed in the Summary of proposed works.
20. Parliament's underlying purpose in enacting the consultation requirements was to ensure that lessees were able to be given notice of proposed works, to give their views on the proposals which the landlord did not have to accept and to nominate a contractor. I am satisfied that those rights will not be prejudiced by the granting of dispensation by the Tribunal.
21. In granting dispensation the Tribunal may impose conditions which instance it proposes to do.
22. 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 listed in the letter dated 27 August 2021 from Iain Staines BSc (Hons) Assoc RICS of Focus Consulting.**
23. **This dispensation is upon the following conditions;**
 - **The work will be supervised by Mr Staines and completed to his satisfaction.**
 - **The costs incurred by the applicant in making this application shall not be recovered from the lessees by way of service charge or any other means.**
24. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

25. **The Applicant is to send a copy of this determination to the Lessees.**

D Banfield FRICS
11 November 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.