



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

Case Reference	: CHI/29UC/LDC/2021/0067
Property	: Flats 1-5, 106-110 Station Road, Herne Bay, Kent CT6 5NB
Applicant	: Samson Property Services (South East)Ltd
Representative	: Azure Property Consultants Ltd
Respondent	: Jessica Blamire (Flat 4)
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	: Made on the papers 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 on 19 August 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of those works listed in the Notice of Intent dated 29 June 2021 namely “Repairs to brickwork of external flank wall, window lintel and associated repairs”.

The granting of dispensation is subject to the conditions listed at paragraph 28.

This decision does not concern the issue of whether any service charge costs will be 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 had erroneously included the lessee of the commercial unit as a Respondent as the protection provided by S.20 of the Landlord and Tenant Act 1985 is only available to residential lessees.
3. The Applicant attached what was referred to as a specification and states that “they have been advised that the area may become unstable and failure would be extremely serious/dangerous”. The specification makes no reference to the address of the property provided, being headed “Pier Heights”
4. A Notice of Intent was said to have been served on the leaseholders.
5. The Tribunal made Directions on 27 July 2021 indicating that it was 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 Directions required the Applicant to clarify the application by providing, a copy of the Notice of Intent, the advice received and confirmation that the 106-110 Station Road and Pier Terrace are one and the same property
7. The Tribunal sent 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.
8. It was indicated that if the application was agreed to or no response was received those lessees would be removed as Respondents.
9. Two responses were received, one agreeing to the proposals and one against. In accordance with the above paragraph the lessees, with the exception of the lessee who submitted an objection, have been removed as Respondents.
10. 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 the receipt of oral evidence was unnecessary given that the nature of the objection was clear

11. 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

12. 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.

13. 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

Applicant

14. The works for which dispensation is required are described in the specification as being at the rear of the property and consists of the erection of scaffolding, the removal of vegetation growing in the wall and treat with strong weedkiller, clear out gutters, remove loose brickwork above the window and repair area with cladding or repair window, remove debris and remove scaffolding.
15. Copies of a Notice of Intent dated 29 June 2021 were provided which described the work as "Repairs to brickwork of external flank wall, window lintel and associated repairs". The Notice gave details of where the specification could be inspected.
16. The Applicant confirmed that the advice as to the condition of the property had been received verbally from a contractor visiting the site when dealing with another matter.

Respondent

17. In objecting to the application Ms Blamire refers to;
 - S.20 works are carried out annually at increasing cost.
 - The works carried out are sub-standard, in areas physically impossible for lessees to inspect and no evidence provided upon completion.
 - The scaffolding erected on 21 June could have been used for these repairs avoiding the additional cost of its constant re-erection.
 - The granting of dispensation will provide a precedent for further applications.
 - Leaseholders should be provided with before and after photographs of the proposed works.
 - The list of works is vague without detailed information on which window it is or where the bricks are loose.

Determination

18. 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. Guidance on how such power may be exercised is provided by the leading case of *Daejan v Benson* referred to above.
19. I remind myself that the issue to be determined is not whether the works are appropriate or reasonable but whether the Respondent has been prejudiced by not being consulted in accordance with S.20. If the standard or cost of works are disputed they are open to challenge, whether or not S.20 consultation has taken place, by an application under S.27A of the Landlord and Tenant Act 1985.
20. The Respondent sets out her objections to the application to which the Applicant has not exercised their right of reply. It seems clear that the Respondent is dissatisfied with the manner in which works are carried out at the property even when full S.20 consultations have taken place and as such I need to establish what further dissatisfaction, or prejudice, would be caused should dispensation be granted on this occasion.
21. I agree with the Respondent that the details of the works proposed are vague and further note that the location of the repairs referred to in the quotation appears to be different from that referred to in the Notice of Intent.
22. The Applicant refers to the urgency of the work as the reason for this application, the evidence of such urgency is said to have been a phone conversation from a contractor visiting the site on another job.
23. Despite the lack of clarity in the evidence provided by the Applicant I am not satisfied the Respondent has demonstrated that she will suffer prejudice by not being consulted as required by S.20. That does not however mean that I am satisfied with the standard of evidence provided by the Applicant but consider that this defect can be dealt with by way of conditions attaching to the dispensation that I propose to provide.
24. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of those works listed in the Notice of Intent dated 29 June 2021 namely “Repairs to brickwork of external flank wall, window lintel and associated repairs”.**
25. **The granting of dispensation is conditional upon the service on each lessee of;**

- **a precise description of the work to be carried out and its location on the building**
 - **photographs of the areas referred to above clearly showing their condition prior to the commencement of works**
 - **on completion of the works to provide photographs of those same areas now repaired**
26. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**
27. **The Applicant will serve a copy of this decision on each of the residential lessees liable to contribute to the service charge.**

D Banfield FRICS
19 August 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.