



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

**Case Reference** : CHI/00HB/LDC/2021/0087

**Property** : 96A Whiteladies Road, Bristol, BS8 2QX

**Applicant** : GUISEPPE AND ELAINE BAIIO

**Representative** : Blenheims

**Respondent** : (1) Mr P Hughes  
(2) Miss S Wickenden

**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** : 2 December 2021

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**DECISION**

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**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to replace and repair the flat roof at the rear over the Property.**

**Dispensation is conditional upon none of the costs incurred in making this application being charged to the Respondents 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.**

## **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 works are required to replace and repair a flat roof at the rear over the Property which the Respondent leaseholders use to access their flats. The Applicants representative refers to a report from RLB Surveyors and that a Notice of Intention has been served.
3. The Tribunal made Directions on 8 November 2021 indicating 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 within 14 days of the date of receipt of the directions.
4. The Tribunal sent a copy of the application and the directions to both Respondents.
5. It was indicated that those lessees who agreed to the application or failed to respond would be removed as Respondents.
6. Two replies were received both of whom objected to the application and therefore remain as Respondents.
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 application remained unchallenged.
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**

### **The Respondents**

11. Mr Hughes referred to works previously carried out following a S.20 consultation and demands for funds in respect of “major works to the walkway, flat and pitched roof” The work was not carried out competently or professionally and the flat owners complained to the agents requesting accounts which have not been received.
12. Following a major fire in the commercial unit in 2019 the landlord made an insurance claim following which Blenheims wrote in May 2020 stating “we have now completed the works to the walkway/roof”. Nothing was then heard until the receipt of an email on 16 September 2021 stating works were to be carried out the following day. The email referred to a surveyor’s report dated 16 August 2021 and a quote dated 1 September 2021 neither of which he had seen.
13. If the matter had become urgent it was due to mismanagement and the delays in completing the work indicated that it was not urgent. He should have received a copy of the report and quotation and would have wished to tender for the work. The landlord/agents failure to comply with S.20 means that he has suffered loss.
14. Miss Wickenden does not consider that the works were an unanticipated emergency and that the section 20 consultation procedure should be dispensed with. Letters from Blenheims dated 5th September 2018 then 3rd October 2019 referred to major works to both the flat roof and pitched roof and this was anticipated to be funded from the reserve fund which she has been paying into. The August survey report is not new evidence of a problem with a leaking flat roof. There has been no explanation as to why the previous planned major works have not been carried out and why this is a new consultation procedure.
15. The lease states the landlord must repair and keep in repair the main structure and she should not be responsible for any additional cost caused by inadequate maintenance of the building during the time which has passed since September 2018 nor the significant increase in building costs during this time.
16. The previous repair costing £7932 and this current repair quoted at £15850 now exceed the original estimate of £18073 for both pitched and flat roofs. I do not believe the damage would have been so extensive nor the bill so large had the building been properly maintained. Carrying out works without communication with the intention of retrospectively recovering costs from the service charge is not in the spirit of the section 20 consultation procedure.
17. Following a lack of communication regarding the previously planned major works, this was then followed by less than 24 hours’ notice of works starting on the 16th September. The roof was removed the following day (17th) then left inadequately protected with no further work for a week. The original walkway and the

remainder of the roof had been removed making the argument of safety of the walkway illogical.

18. Miss Wickenden has been left without access to the front door through unsafe steps and on one occasion no steps at all. Compliance with health and safety regulations and protection of the roof during works were not as specified in the RLB report. A tile on the new walkway has already cracked through being unlevel. Miss Wickenden is not happy with the quality of the work and does not agree that health and safety has been the cause or a priority.
19. Photographs illustrating Miss Wickenden's points have been provided.

### **The Applicant's reply**

20. In a reply from Blenheim's dated 26 November 2021 it is clarified that the 2019 works did not extend to the full flat roof area but consisted of repairs to the walkway section as indicated on a plan later provided. The work undertaken was to deal with a leak into the commercial unit whereas it became apparent that that the entirety of the flat roof should be addressed in full. Photos of the roof indicating their condition were supplied.
21. In an email to Blenheims dated 29 September 2021 from Michael Vicars-Harris of RLB it is said that there is significant water ingress resulting in deterioration to the timber decking hence the urgency to carry out the works to make the walkway safe and preserve the roof's integrity. A series of undated photographs are provided showing the flat roof the surface of which appears to be in poor condition.

### **Determination**

22. 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. The case of Daejan v Benson referred to above provides guidance to the Tribunal when considering the issues raised by the parties.
18. As indicated in the Tribunal's Directions the Respondents needed to provide evidence of what they may have done differently if the Applicant had complied with the full statutory consultation process.
23. The Respondents have referred to the works carried out previously and question whether they were carried competently. It was clearly the understanding of the Respondents that payments made in 2019 were in respect of putting the roof into repair and Blenheims' letter of May 2020 seemed to confirm that understanding.

24. The Respondents also question whether the Applicants assertions with regard to urgency and Health and Safety issues are well founded.
25. I have some sympathy with the Respondents on these issues and have concerns over whether the earlier works should have included the works now undertaken thereby avoiding what may be a duplication of costs.
26. Such concerns are not however relevant to the matter in hand that being whether the Respondents have been prejudiced by the lack of consultation for the 2021 works. Whilst urgency may be one of the reasons for an application for dispensation to be made it is whether the Lessees have been prejudiced that is the issue for the Tribunal.
27. Neither Respondent has produced evidence of what they would have done differently if they had been consulted and as such I am unable to find that they have suffered the type of prejudice referred to in the Daejan case referred to above with particular reference to sub paragraph 10 vii.
28. Although I would have liked to have seen the surveyor's report dated 16 August 2021 Mr Vicars-Harris' email of 29 September 2021 and the submitted photographs make it clear that the flat roof is not in good condition and likely to be the source of the leaks reported by the commercial tenant.
29. As such it was a reasonable decision to avoid delaying those works whilst consultation was carried out and I am therefore prepared to grant the dispensation requested.
30. Whilst granting dispensation I do however consider that if these works had been included in the S.20 consultations carried out for the earlier works the costs in making this application would have been avoided. I therefore intend to make dispensation conditional.
31. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to replace and repair the flat roof at the rear over the Property.**
32. **Dispensation is conditional upon none of the costs incurred in making this application being charged to the Respondents by way of service charge or any other means.**
33. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
2 December 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](mailto: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.