



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

**Case Reference** : CHI/45UH/LDC/2021/0097

**Property** : Charnwood Court, 2 Farncombe Road,  
Worthing, West Sussex BN11 2BE

**Applicant** : J H Watson Property Investments Limited

**Representative** : Louise Rinder

**Respondents** :

**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** : 8 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 remove and refit/renew roof slates displaced by wind damage and renew roof felt and battens.**

**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 landlord seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed by Section 20 of the Act.
2. The Applicant explains that work to remove and refit/renew roof slates displaced by wind damage has been undertaken without consultation due to urgency as it was causing water ingress into a flat. At the same time roof felt and battens will be renewed.
3. The Applicant was also required to send each Respondent a dated and signed statement that explained the scope of the roof felt and batten work and the reasons for including it in this application.
4. A copy of this statement has been provided indicating that;  
  

*“The reason the felt and battens have been included in this application to be renewed now because upon investigation when the contractor attend to the leak caused by the tiles been missing it was found that their condition had deteriorated and will require replacement in the short term and so it is proposed that they are replaced now in order to prevent a duplication of costs. This is restricted to the immediate area around where the leak was found.”*
5. The Tribunal made Directions on 22 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.
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 and Tribunal.
7. It was indicated that those lessees who agreed to the application or failed to respond would be removed as Respondents.
8. One reply was received agreeing to the application and in accordance with the above paragraph the Lessees have been removed as Respondents.
9. No requests for an oral hearing have been received and the matter is therefore determined in accordance with Rule 13 on the papers received.
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 reason for the application is set out in paragraphs 2 and 4 above. In the absence of any objection from the lessees the Applicant has not been required to submit any further evidence and the determination is made on the papers already received.

### **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 as referred to in the Daejan case above has been submitted.
- 16. 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 remove and refit/renew roof slates displaced by wind damage and renew roof felt and battens.**
- 17. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
- 18. **The Applicant is to send a copy of this determination to the Lessees.**

D Banfield FRICS  
8 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.