



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

Case Reference	: CHI/21UC/LDC/2022/0019
Property	: 40 Meads Street, Eastbourne, East Sussex, BN20 7RG
Applicant	: Graystacks Ltd
Representative	: Prestige Property Management Ltd
Respondent	: Mr J Rollings (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	: D Banfield FRICS Regional Surveyor
Date of Decision	: 7 April 2022 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.

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the works the subject of the Johnsons roofing quotation of £2,975 plus VAT.

Dispensation is conditional upon the Respondent receiving a 10% reduction in his share of the eventual costs of carrying out the proposed roof repairs.

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 decision to each lessee.

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. The application was received on 22 February 2022.
2. The property is described as three flats (conversion) above Emslie Tarrant Estate Agents.
3. The Applicant explains that there are two major water leaks in both bay windows of the property which is causing great distress and inconvenience to the tenant in Flat 2, therefore urgent works are required.
4. A quotation for the works has been provided from Johnsons roofing of £2,975.00 + VAT.
5. The works listed are:
 - Erect scaffolding including pavement licence to gain access to both areas.
 - Remove the existing roof coverings and discard.
 - Supply and fix 11mm osb to the existing structural timber decks.
 - Install Westwood wecryl pmma liquid waterproofing system finished in ral 7016.
 - Terminate waterproofing under existing lead flashings/lead tray.
6. The quotation also states that an extra provisional fund of £500.00 + VAT will need to be allowed for in case of unforeseen rotten timbers.
7. The Tribunal made directions on 2 March 2022 indicating that the Tribunal was satisfied that the matter was urgent, that it was not practicable for there to be a hearing and it was 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).
8. The Tribunal served its Directions on the Leaseholders together with a form for them to indicate to the Tribunal whether they agreed with or opposed the application. It was indicated that if they agreed with the application or failed to return the form they would be removed as a Respondent.

9. Two lessees replied one of whom objected to the application. As such the other Lessees have been removed as Respondents in accordance with the above paragraph.
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 they were, given that the Respondent's objections were clearly expressed without the need for oral evidence.
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

Respondent

- 14. In his statement the Respondent refers to inaccuracies in the application in that the flat does not have a “family with young children” and that the occupiers of Flat 2 “do not appear to be stressed other than the fact that they highlighted this water leak in the summer of 2021”. He questions the amount of the quote given that the contractor refers to it as “not a big job” and refers to his own financial circumstances.
- 15. Funds have already been requested and the contractor instructed before seeking dispensation from the Tribunal. Without competitive quotes he will be financially worse off.

Applicant

- 16. The Applicant’s evidence is contained in paragraphs 3–6 above. No reply has been made to the Respondent’s statement.

Determination

- 17. 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.

18. The Respondent disputes the urgency of the works given that they have been described as long standing and the occupiers of Flat 2 have been waiting since last summer. He also refers to his own financial circumstances and that it appears that a contractor has already been instructed.
19. The issue for the Tribunal however is whether the absence of consultation has prejudiced the Respondent and whether if he had been consulted the eventual outcome including costs would have been different.
20. Urgency or lack of it is not necessarily an issue except that it may, as in this case, potentially prevent competitive quotations being obtained. The benefit of seeking more than one quotation is twofold; it demonstrates to the paying party that the best price has been obtained and it provides an incentive to contractors to put forward a competitive quotation.
21. In the absence of a response from the Applicant I must accept the Respondent's contention that the contract has already been awarded and therefore that it is no longer possible for competitive quotations to be obtained. In these circumstances I accept that an element of prejudice may exist.
22. I also accept however that it would be unreasonable to refuse to give dispensation thereby giving the Respondent a "windfall" by restricting his share of the costs to the current limit of £250. I therefore propose to grant consent subject to a condition intended to compensate the Respondent for the potential additional cost incurred by the Applicant's failure to obtain more than one quotation. Doing the best I can I determine that a deduction of 10% should be applied to the eventual cost of the roof works.
23. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the works the subject of the Johnsons roofing quotation of £2,975 plus VAT.**
24. **Dispensation is conditional upon the Respondent receiving a 10% reduction in his share of the eventual costs of carrying out the proposed roof repairs.**
25. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
26. **The Applicant is to send a copy of this decision to each lessee.**

D Banfield FRICS
7 April 2022

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.