



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

<b>Case Reference</b>	:	CHI/21UL/LDC/2022/0114
<b>Property</b>	:	Baslow Court, 25 Baslow Road, Eastbourne, East Sussex, BN20 7UL
<b>Applicant</b>	:	Baslow Court (Eastbourne) Management Company Ltd
<b>Representative</b>	:	Prestige Property Management Ltd
<b>Respondent</b>	:	The leaseholders
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA Landlord and Tenant Act 1985
<b>Tribunal Member(s)</b>	:	Mrs J Coupe FRICS
<b>Date of Decision</b>	:	13 February 2023

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**DECISION**

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## **Summary of the Decision**

**The Tribunal grants dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985 in respect of undertaking urgent remedial work to the roof and roofing underlay in order to prevent further water ingress.**

The reasons for the Tribunal's decision are set out below.

### **REASONS**

#### **Background**

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed on the landlord by section 20 of the 1985 Act. The application was received on 20 December 2022. A copy of a sample lease was received on 17 January 2023.
2. In the application, the Applicant describes the property as a purpose built residential block of 11 flats, over 4 floors, constructed in the early 1970's, occupying a sloping site in the Meads area of Eastbourne.
3. The Applicant seeks dispensation on the grounds that the property is experiencing water ingress into the roof void as a result of failure of the sarking felt underlay. The application is supported by a report prepared by Kingston Morehen Chartered Surveyors dated 19 December 2022 and two additional photographs showing damaged sarking felt and water collection receptacles within the roof void. Dispensation is sought on the grounds that the reparatory works are considered urgent.
4. A quotation from P.M. Skilton in the sum of £23,275.00 was provided. The Applicant advises that they sought quotations from two further contractors. However, neither contractor had availability until summer 2023. The Applicant therefore proposes to appoint P.M. Skilton.
5. On 16 January 2023, the Applicant advised the Tribunal that a second quotation had now been received in the sum of £46,500 plus VAT.
6. The Tribunal made Directions on 19 January 2023, advising that it considered the application suitable for determination on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 7 days. The Tribunal received no objections.
7. On 23 January 2023, the Applicant advised the Tribunal that due to worsening conditions reparatory works had commenced.
8. On 23 January 2023, the Applicant confirmed to the Tribunal that all leaseholders had been issued documentation in accordance with the Tribunal directions dated 19 January 2023.

9. On 10 February 2023, the Applicant advised the Tribunal that they had not received any leaseholder objections to the application.
10. Included within the Tribunal directions was a form for the Respondent leaseholders to indicate to the Tribunal whether they agreed or opposed the application and whether they consented to the Tribunal determining the matter on the basis of written representations. No responses were received.
11. 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.
12. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

### **The Law**

13. The relevant section of the Act reads as follows:

S.20ZA 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.

### **Discussion**

14. There is no objection to this application by the leaseholders. However, the Tribunal must be satisfied under s.20ZA that it is reasonable to dispense with the consultation requirements.
15. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“Daejan”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20. 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 Supreme 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.
16. The circumstances of the application are contained within the application form and supporting documentation. In summary, following water ingress into the roof void reparatory works are required to replace failed sarking felt and rotten roofing timbers. Scaffolding access is required.

## **Decision**

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 referred to above.
18. Roofing and undelay repairs to ensure a watertight structure and to prevent water ingress are clearly matters of urgency. No leaseholder has raised any objection and therefore the type of prejudice referred to in Daejan has not been identified.
19. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements in respect of necessary works to the roof as described in the Applicant's application.

20. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable. The leaseholders are not prevented from challenging the reasonableness of any service charge arising from the relevant work.
21. The Tribunal directs the Applicant to supply a copy of this decision to each of the leaseholders and to confirm to the Tribunal that it has done so.

### **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.