



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

<b>Case Reference</b>	:	CHI/43UL/LDC/2022/0109
<b>Property</b>	:	Courtney House, St Christophers Road, Haslemere, Surrey, GU27 1DQ
<b>Applicant</b>	:	Southern Land Securities Limited
<b>Representative</b>	:	Together Property Management
<b>Respondents</b>	:	The Leaseholders as set out in the schedule Attached to the Application
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member(s)</b>	:	Judge Tildesley OBE
<b>Date and Venue of Hearing</b>	:	Determination on Papers
<b>Date of Decision</b>	:	14 February 2023

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DECISION

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## The Application

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 15 December 2022.
2. The property is described as a purpose-built block of eight residential apartments spanning three storeys, situated off the main High Road in Haslemere, Surrey. The property was built around 2005 of concrete, breeze block and cavity brick construction.
3. The Applicant explained that it had received a report of the drains backing up at the property. On inspection, a pump contractor found that the pump had failed and in need of replacement. The chambers need emptying as full with sewage and due to health and safety reasons the Applicant had no option but to proceed with a tanker attending the property, and replacement of the pump the same day.
4. The Applicant sought dispensation on the ground that it did not have time to consult with leaseholders because of the urgency of the works and the risks to health and safety if the works were not carried out quickly.
5. The Applicant had notified the leaseholders of the proposed works and costs. The Applicant informed the leaseholders that

“Unfortunately, with this being only a single pump system it is a matter of urgency to resolve these problems. We hope the pump company to be able to complete these repairs today.

Please see the below charges that will be incurred, and the cost will be split between all Leaseholders as per the terms of the Lease. Unfortunately, the cost of the work is over the budget, and we will need to submit a retrospective FTT application to dispense from Section 20.

Kindly see the below charges.

1. Pump replacement - £1950+vat
2. Tanker - £196.00 incl vat
3. Call-out charge £172.50+vat”.

6. On 10 January 2023 the Tribunal directed the Applicant to serve the application and directions on the Respondents, which the Applicant did on 11 January 2023
7. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 31 January 2023 indicating whether they agreed or disagreed with the Application. The Tribunal received no completed returns.

8. The Tribunal also directed the Applicant to confirm to the Tribunal by 7 February 2023 that no objections have been received from the leaseholders. The Applicant confirmed on 6 February 2023 that it had received no objections.

### **Determination**

9. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
10. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
11. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
12. Lord Neuberger in *Daejan* said at paragraph 44  

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
13. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence

of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

14. The Tribunal now turns to the facts. The Tribunal is satisfied in view of the tangible risks to health and safety that the Applicant had to empty the sewage chamber and to replace the pump as a matter of urgency and that it did not have time to go through the full consultation process. The Applicant, however, informed the leaseholders of the proposed works and the costs. The Tribunal takes into account that no leaseholder has objected to the Application.
15. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

### **Decision**

16. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works carried out to replace the pump and to empty the sewage chamber.**
17. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

## **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.