



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

Case Reference	:	CHI/21UG/LDC/2023/0028
Property	:	Flats 1-4, 23 Devonshire Road, Bexhill On Sea, East Sussex, TN40 1AH
Applicant	:	Holdmanor Ltd
Representative	:	Oakfield PM Ltd
Respondent	:	-
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	:	6 April 2023

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of replacing the front flat roof.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Decision is binding on all Lessees and the Applicant is to send a copy of this determination to all of those liable to contribute to service charges.

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 property is described as “*a converted building of 4 flats and 1 commercial unit over 4 levels. The building is situated on the high street of Bexhill.*”
3. The Applicant explains that;

“The works in question are urgent due to water ingress in the commercial unit which will only stop if we replace the flat roof. Replacing the flat roof will then allow us to carry out the necessary remedial works within the commercial unit.

The works are required to be carried out imminently. Please find attached the estimate from SDS builders and decorators for the replacement of the flat roof and the required remedial works in the commercial unit. The works required will enlarge the outlet on the flat roof allowing more water to be disposed of quickly and reduce blockages. It will also replace the flashing as this has also deteriorated.

Statutory consultation has not been carried out.

The flat roof has failed due to it deteriorating and not being a suitable design for the building.”
4. Copies of two estimates from SDS Builders & Decorators have been provided. One totalling £1,554.00 (including VAT) in respect of replacing the front flat roof and one for £1,440.00 (including VAT) in respect of decoration to the interior of the shop unit.
5. The Tribunal made Directions on 16 March 2023 setting out a timetable for the disposal and requiring the Applicant to send them to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents although they would remain bound by the Tribunal’s Decision.
6. On 20 March 2023 the Applicant confirmed that the documents had been distributed to the Leaseholders and on 5 April 2023 that no objections had been received. Those lessees who did not respond have been removed as respondents although they remain bound by the Tribunal’s determination.

7. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
8. 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.

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.
 - a. 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.
 - b. 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.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. 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).
 - f. 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.
 - g. 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.

- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 11. The Applicant's case is set out in paragraphs 4 and 5 above.

Determination

- 12. 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.
- 13. Before dispensation can be considered the Tribunal has to be satisfied that the works for which dispensation is sought can be properly charged to the service charge. From an examination of the lease, in particular clause 4 of the Fifth Schedule which specifically excludes the ground floor shop and basement, the Tribunal is not satisfied that the cost of internal decoration of the ground floor shop is recoverable from the lessees by way of the service charge.
- 14. In view of the above the Tribunal refuses the application in respect of the ground floor decoration.
- 15. Maintaining the structure is however referred to in clause 1 of the Fifth Schedule and as such may be recoverable through the service charge.
- 16. Clearly the prevention of water ingress is essential to the integrity of the structure and should not be unduly delayed by following the full S.20 consultation procedures. In this case no prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant the dispensation required in respect of roof repairs.
- 17. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of replacing the front flat roof.

18. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
19. The Decision is binding on all Lessees and the Applicant is to send a copy of this determination to all of those liable to contribute to service charges.

D Banfield FRICS
6 April 2023

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.