



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

Case Reference	:	CHI/21UG/LDC/2023/0035
Property	:	Flats 23A-D, 21-23 Sea Road, Bexhill On Sea TN40 1EE
Applicant	:	Miss Suhail Soroya & Mr Nabeel Soroya
Representative	:	Oakfield P.M. Limited
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	:	17 April 2023

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the urgent works to replace the Fire Alarm Panel, Fire Alarm and Emergency lighting.

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

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 17 March 2023 and was accompanied by quotation dated 24 February 2023 from 'J S Fire Protection'.
2. The Applicant describes the property as,

“A CONVERTED PROPERTY WHICH NOW HOUSES 4 FLATS AND ONE COMMERCIAL UNIT. THE BUILDING IS SITUATION [Sic] NEAR BEXHILL SEA FRONT.”
3. The Applicant explains that,

“THE WORK REQUIRED IS TO REMOVE THE CURRENT FIRE ALARM PANEL, AND INSTALL AND COMMISSION A NEW PANEL, FIRE ALARMS AND EMERGENCY LIGHTING. THE CURRENT PANEL HAS A NUMBR [Sic] OF SIGNIFICANT [Sic] FAULTS PRESENT AND IT IS NOT ECONOMICALLY EFFICIENT TO REPAIR AND REPLACEMENT IS REQUIRED.

THE PANEL WAS ORIGINALLY [Sic] INSTALLED BEFORE OAKFIELDS MANAGEMENT AND UPON COMMISSIONING THE ALARM SYSTEM THESE FAULTS WERE IDENTIFIED [Sic]. THE PANEL IS INOPERATIVE CURRENTLY.

STATUTORY [Sic] CONSULTATION HAS NOT BEEN CARRIED OUT.”
4. Dispensation is sought because the Applicant is,

“...SEEKING [Sic] DISPENSATION TO SEE THAT THESE WORKS ARE COMPLETELY [Sic] URGENTLY TO ENSURE THERE IS SUFFICIENT PROTECTION FOR THE BUILDING IN THE EVENT THERE IS A FIRE. WE HAVE BEEN ADVISED THE ENTIRE PANEL NEEDS REPLACEMENT.”
5. The Tribunal made Directions on 28 March 2023 setting out a timetable for the disposal. The Tribunal sent 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. No responses were received by the Tribunal and the Applicant confirmed that no objections had been received.
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 2 to 4 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. Clearly maintaining fire safety is essential to the enjoyment of the property by its occupiers 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 requested.
- 14. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the urgent works to replace the Fire Alarm Panel, Fire Alarm and Emergency lighting.
- 15. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 16. The Decision is binding on the Lessees to whom the Tribunal will send copies of its determination.

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.