



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : CHI/29UB/LDC/2023/0010

Property : Quarry House, Calleywell Lane, Aldington,  
Kent TN25 7FZ

Applicant : Housing 21

Representative :

Respondent : The Leaseholders

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 : 20 April 2023

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DECISION

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The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of a water pump serving the heating system.

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

The Applicant will 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 made on 25 January 2023.

2. The property is described as an :

*“Extra care scheme for older people, age 55 plus, there are 33 flats. 16 Shared owners and 17 rental flats. All SHO flats are 2 bed properties, rentals are a mixture of one bed and two bed properties. All flats are self contained, with their own bathroom and kitchen. Within the scheme there is a communal lounge, Hair salon and a bistro, Bistro and Hairsalon are open to the public also. Hairsalon and Bistro are rented as commercial units, licencees pay rent and utilities only. There is a third party care provider onsite who provide a care service to the residents, either private or purchased through social services. Kent county council fund a background support ( one carer on site 24/7) to answer any lifeline calls and support in an emergency situation.*

3. The Applicant describes the urgent works as follows:

*“Following a routine [sic] service and reoccurring [sic] incidents of loss of heating and hot water due to the Heating system breaking down (Bio Mass), extensive work is required to bring the system [sic] to full working order to avoid further losses of hot water and heating to tenants flats and communal areas of the building. The ssystem [sic] is operating on one pump and pump is failling [sic] to provide full operating system [sic] that is needed. The system [sic] operates on two pumps, which rotate, one pump is out of order and the other is failing [sic]. The work required will bring the ssystem[sic] to fully operational [sic]. It is planned for the work to start as soon as the parts have arrived.”*

4. Dispensation is sought because:

*“Due to the urgency of the work, there is no time to carry out a full consultation with the residents, the work required needs to be completed to avoid complete failure of the heating sysystem [sic] and hot water. The resident group at Quarry house are of an older vulnerable age with some having health issues. It would a detrimental to some resdients [sic] health recovery and some resdients [sic] needing personal care as part of their care support [sic] needs.”*

*“A letter to residents has been sent to advise of the work required and the cost involved [sic]. Residents are kept informed through residents [sic] meetings, newsletters and letters.”*

5. The Tribunal made Directions on 23 February 2023 setting out a timetable for the disposal. The Tribunal required 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 28 February 2023 the Applicant confirmed that the Tribunal’s directions had been sent to the Lessees and on 3 April 2023 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 2,3 and 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 the heating and hot water system 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 required.

14. It is however unfortunate that the Applicant has provided only minimal information as to the works for which dispensation is requested. From paragraph 3 above it appears that the issue is the failure of a pump and as such this dispensation will be in respect of its replacement.
15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of a water pump serving the heating system.
16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
17. The Applicant will send a copy of this decision to each lessee.

D Banfield FRICS  
20 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](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.