



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

Case Reference	: CHI/21UC/LDC/2023/0030
Property	: Park Gates, Chiswick Place, Eastbourne BN21 4BE
Applicant	: Eastbourne (Park Gates) Investments Limited
Representative	: Stiles Harold Williams
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
Date of Decision	: 26 April 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to reinstate the power supply.

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 received on 8 March 2023.
2. The Applicant has provided a Schedule of Works from IWA M&E Consulting Engineers dated March 2023.
3. The Property consists of:

“56 flats within 2 wings along with an annexe. There is a passenger lift in each wing. There is a large basement serving both wings which has plant rooms, bin chutes and residents storage cupboards. It is noted that this basement runs beneath both main wings of the building. It is for this reason that the alarm system has configured a single stage, simultaneous evacuation for these parts of the building. It is understood that the building was originally an hotel, damaged during WWII and redeveloped as residential accommodation post war, the top floor penthouse being added a later date”.

4. The works are described as:

“electrical repairs to the cabling that controls the whole electricity [sic] to the north block and partly to the main block.”

Further,

“No current consultation [sic] has been conducted as this arose Friday 3rd March 2023.”

“We need dispensation of all consultation as we need to be able to implement works immediately to ensure the welfare and safety of residents is kept, especially [sic] the elderly.[sic]”

5. The Applicant explains that:

“It appears that the 10 way cut out located in the top boiler room was fed via a 60 amp single phase switch fuse in the lower boiler room. The switch fuse is heat damaged and it maybe that there is something else like wire in the fuse holder as well this will need dismantling to confirm.

Due to the extent of the damage the switch fuse that had the incoming cabling has burnt out so badly that it has now become disconnected from the incoming side of this switch and appeared to have melted and dropped a weld like substance on the connection. Please note, the live cable that had the insulation completely burnt away from it safe now.

This has left the whole north block (6 flats) & 2 flat within the main block with no power inside there flats and also the common ways. please be aware a generator is now in operation for the time being, but this is only a weeks hire.

Works will need to be implemented [sic] this week which will most likely exceed the S20 threshold, but this is to ensure the many elderly residents [sic] affected have sufficient heating and power to their food storage.”

6. The Tribunal made Directions on 16 March 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.
7. On 30 March 2023 the Applicant confirmed that the Tribunal’s directions had been sent to the Lessees. The Tribunal received 10 responses all of which were in favour of the application.
8. 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.
9. 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

10. 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.
11. 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

12. The Applicant's case is set out in paragraphs 3 to 5 above.

Determination

13. 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.

14. Clearly maintaining a power supply 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.
15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to reinstate the power supply.
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
26 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.