FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/18UC/LDC/2023/0029
Property	**:**	49 Union Road, Exeter, Devon EX4 6HU
Applicant	**:**	49 Union Road Exeter Limited
Representative	**:**	Plymouth Block Management
Respondent	**:**	Andrew J Cartwright (Flat 1) Suzie Ricketts (Flat 2) Simon Thomas (Flat 3) Tamsin Daysh (Flat 4)
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

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof repairs, the eradication of dry rot in Flat 4 and repairs to the rendering..

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. This retrospective application was received on 7 March 2023.

2. The property is described as a *"Purpose-built two-storey building consisting of four flats."*

3. The Applicant has attached a schedule of works which has been *"produced by the leaseholder's preferred surveyors at Baker and Baker."*

4. The Applicant explains that:

> *"Significant works are required to the roof to repair existing defects and upgrade [sic] the rainwater screen.*
>
> *Major remediation works in Flat 4 to address dry rot*
>
> *Render works to the front and rear elevation to address water ingress and damp"*
>
> *"The work has been completed due to immediate safety concerns and to prevent further deterioration of the property."*

5. Further,

> *"The leaseholders have been fully involved with the tendring [sic] process and have driven the project to its current position where they wish to appoint baker and Baker to carry out the full set of works listed in their scehdule [sic] of works".*

6. Dispensation is sought:

> *"As all leaseholders are in agreement they do not feel it is necessary to complete the consultation requiremenst [sic] under the provisions of Section 20.*
>
> *The leaseholders own the freehold collectively through the management company so there are no other involved parties to consult".*

7. The Tribunal made Directions on 8 March 2023 setting out a timetable for the disposal which was sent 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.

8. On 5 April 2023 the Applicant confirmed that no objections had been received although a query had been received from one lessee which will be referred to below.

9. 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.

10. 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

11. 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.

12. 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

13. The Applicant's case is set out in paragraphs 2 to 6 above.

14. A response from the lessee of Flat 2 stated "There is now a suggestion that some of those works that have already been paid for may not be done at this stage after all and that the money raised for those works will be used for something else. I have taken advice and been told that that is unlawful as all parties are not in agreement. Are you able to advise at all please? My view is that the money should be used for the purposes it was raised for and, if other works are required, further funds should be raised under s.20 or s.20 z if appropriate. Thank you . I am not requesting the tribunal to halt the process at all as the works are in progress – this is just a query that has arisen. Thank you."

Determination

15. 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.

16. Repairs were identified in respect of the roof, dry rot in Flat 4 and repairs to the rendering. The leaseholders, who also own the freehold, were involved in the tendering process and the works were specified by their preferred surveyors. No objections have been received.

17. No prejudice of the type referred to in the Daejan case above has been identified and as such the Tribunal is prepared to grant the dispensation required.

18. In response to the question raised by the Lessee of Flat 2 it should be noted that this dispensation is for the repairs specified in the following paragraph only.

19. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof repairs, the eradication of dry rot in Flat 4 and repairs to the rendering..

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

21. 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 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.