



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

Case Reference	: CHI/00HA/LDC/2023/0034
Property	: 1 Abbey Street, Bath, BA1 1NN
Applicant	: 1 Abbey Street (Bath) Limited
Representative	: Michael Braddick
Respondent	: Averbell Investments Limited (Flat 1) Jonathan Dancourt-Cavanagh (Flat 2) Geoffrey Wilson (Flat 3) Mrs P M McIlwraith (Flat 4) Quirijn Jean Stourton Den Rooijen (Flat 5)
Representative	: Melanie Hudson – Hamptons (Flat 5 only)
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 May 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the commissioning of the Structural Report from June 2022 and the subsequent Schedule of Works. For the avoidance of doubt this dispensation does not extend to the carrying out of any repairs the subject of that Schedule of Works.

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 retrospective 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 16 March 2023.
2. The property is described as “*mixed use, residential and commercial property, consisting of 5 residential flats above 2 commercial units. It is a 5 story (sic), Grade 2 listed Georgian building in the centre of Bath, build around 1760.*”
3. The Applicant explains that:

“After scaffolding was erected to enable roof repairs and repointing (this work was done via the Section 20 process), a crack was discovered in a chimney on the gable end wall, extending from the outside into the flue.

It should be noted that there is uncertainty as to whether this chimney is the responsibility of 1 Abbey St, or a neighbouring derelict building (9 York St), or a shared responsibility. However the owner of 9 York St died in June 2021 and his will has yet to be submitted to probate. The person we believe to have inherited the property doesn't respond to communication.

On 8.6.22 our surveyor Victoria Elliott of Paragon, confirmed that a Structural Engineer's report at a cost of £2,100 (including VAT) should be obtained urgently rather than waiting for the Section 20 process. Morgan Structural subsequently attended on 22.6.22 and provided temporary strapping to secure the loose stones. I received a copy of the report on 29.7.22. This recommended further action within 3 months. They quoted £4,500 (including VAT) to produce a detailed schedule of works and recommended that work on the chimney be done within 3 months. Being aware of the risk associated with autumnal storms, on 3.8.22 I authorised the production of a schedule of works.

Leaseholders and the freeholders were informed of the cracked chimney flue by email on 17.5.22. On 25.5.22 the leaseholders for Flat 1 replied and CCed all leaseholders and the Freeholder to say that “until the repair has been declared 'urgent' by Vicky's structural engineer, and that has been reported to the Council, AND all have agreed that it is both urgent and our building's responsibility, WE WILL NOT, IN ANY WAY FUND any activity of any kind.”

8.6.22 our surveyor Victoria Elliott of Paragon, confirmed that a Structural Engineers report at a cost of £2,100 (including VAT) should be obtained urgently rather than waiting for the Section 20 process.

On 21.6.22 I circulated a summary of issues facing Abbey St and commented that “the cost of the structural engineer’s survey exceeds the threshold for a Section 20 consultation. However it is accepted that when a problem is urgent it is appropriate not to engage in the 3+ months of consultation. Once we have the structural engineer’s report we will need to consider next steps.”

After obtaining the structural engineer’s report I emailed leaseholders and the freeholder with a copy on 3.8.22 and stated that ‘since our surveyor regards this as urgent I have authorised the production of a detailed schedule of works at a cost of £4,500 (including VAT), rather than begin a Section 20 process which would take at least three months’.

The schedule of works did not reach me until 27.1.23. Given the surveyors comments that the chimney seemed to be holding up well, but that work should be done in spring / summer; I am now following the Section 20 process to identify a contractor to do the work.”

And further

“I seek dispensation on the grounds of the urgency of the problem as indicated by the surveyor and subsequently by the structural engineer. I did keep leaseholders and the freeholders informed and discussed the situation with our managing agent Louise Williams. However I did not bow to pressure from one leaseholder to inform the council and seek agreement from everyone. From the outset I have argued that we need to fund this work and then see whether there is scope for recouping all or part of our costs from the owner of 9 York St. I am still hopeful that the uncertainty around the ownership of 9 York St will be resolved without our having to engage solicitors.

However the leaseholders for Flat 1, have challenged the reasonableness of my decisions to authorise payment of £2,100 and £4,500 to Morgan Structural to produce a structural survey and detailed specifications for the work required to make the chimney safe. It would be helpful to have an independent opinion as to whether my actions were appropriate.”

4. The Tribunal made Directions on 27 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.

5. On 26 April 2023 the Applicant confirmed that the Tribunal's directions had been sent to the Lessees and on the same day the Tribunal received an objection from the Lessee of Flat 1. Flat 2 agreed with the application and no response has been received from the remaining Lessees.
6. 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.
7. 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

8. 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.

9. 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

10. The Applicant's case is set out in paragraphs 2 and 3 above.
11. In objecting to the application Mr Lance/Averbell Inv Ltd say that;
 - Mick Braddick has frequently ignored or dismissed the wishes of one or more of the flat lease holders.
 - Mr Braddick is both our Director and an owner of the building
 - He did not follow 20ZA, did not advise leaseholders in advance and incurred expenditure in excess of the statutory £250.
 - Failed to obtain the required consent based on his interpretation of comments of outside vendors and spent or agreed to pay £6,600 to Morgan structural and others.
 - Failed to determine at the outset whether the Company has any responsibility for the chimney in question.
12. Mr Lance asks the Tribunal to apply the following remedies;
 - Order Mr Braddick to determine the legal responsibility for the chimney repairs
 - That any arrangements for making that determination be disclosed at least 30 days in advance of any action and approved by the majority of the Company
 - The resulting evidence be circulated before costs are incurred
 - Any Section 20 process started be declared void

- If it is determined that the Company does not have responsibility for the Chimney the costs authorized by Mick Braddick be removed from the books of account of the Company.

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. The issue for the Tribunal in this application is whether the Lessees have suffered prejudice by not being consulted prior to the Applicant incurring the cost of obtaining a structural report and subsequently a Schedule of Works.
15. The unchallenged evidence is that during the course of works that had been subject to a S.20 consultation the scaffolding enabled a closer view of the gable wall which exhibited cracks that caused concern. The gable wall is in the town centre facing the side of Bath Abbey.
16. In these circumstances the Tribunal is satisfied that it was a reasonable decision of the Applicant to obtain professional advice as to the extent of the problem as a matter of urgency.
17. Turning now to whether the Lessees have suffered any prejudice by the lack of consultation I have to consider what advantages such consultation would have provided. They would have been able to comment on the proposed works which the Applicant would be obliged to consider, nominate an alternative contractor and competitive quotes would have to be obtained.
18. The objections raised however do not address such issues and are largely a complaint as to the management style of the Applicant. The remedies the Tribunal are asked to apply are not ones it has powers to impose (even if thought appropriate) under the current application.
19. Given that I am satisfied that a report was required to be obtained without delay and that sufficient evidence of prejudice has not been put forward the Tribunal is prepared to grant the dispensation required.
20. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the commissioning of the Structural Report from June 2022 and the subsequent Schedule of Works. For the avoidance of doubt this

dispensation does not extend to the carrying out of any repairs the subject of that Schedule of Works.

21. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
22. The Applicant will send a copy of this decision to each lessee.

D Banfield FRICS
17 May 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.