



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

Case Reference	: CHI/00HB/LDC/2022/0107
Property	: 11 Exeter Buildings, Redland, Bristol BS6 6TH
Applicant	: LiveWest Homes Limited
Representative	: Stephens Scown LLP
Respondent	: Keith James Ritchings (Flat 1) Mary Swan (Flat 2) Yin Harn Lee (Flat 3)
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	: 30 May 2023

DECISION

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

- 1. Take down and preserve the existing masonry facing.*
- 2. Take down the core wall in its entirety and construct a new block inner wall.*
- 3. Re-fix the preserved masonry facing to the new block inner wall.*
- 4. All floors, roofs, party walls and return walls to be fully supported and braced back into the designed scaffold for the duration of the 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 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 made on 13 December 2022.

2. The building is described as:

“11 Exeter Buildings is a four-storey Georgian mid-terrace townhouse. The age of the property is unknown, but it is shown on a map from 1882 and may have been constructed in the early 19th century.

The property has subsequently been converted into flats. There are four flats within the building, one on each floor. Three are let on long leases to the Respondents. The fourth is a general rented property and the tenant has been decanted to alternative premises so is currently vacant. The Applicant is responsible for all costs associated with the fourth flat.

The lowest floor level is semi-basement construction.

The building has an ashlar stone facade.”

3. The Applicant explains that:

“There is a concern over the stability of the building and the potential risk to the health and safety of both the general public and to the occupants of the building if sections of stone should fall from height Supporting scaffolding (propping) and hoarding has been erected in an attempt to stabilise the structure and make it safe but the Applicant still wishes to carry out works urgently for the safety and comfort of the occupants.”

4. The works are described as:

*“1 . Take down and preserve the existing masonry facing.
2. Take down the core wall in its entirety and construct a new block inner wall.*

3. Re-fix the preserved masonry facing to the new block inner wall.

4. All floors, roofs, party walls and return walls to be fully supported and braced back into the designed scaffold for the duration of the works.”

The Consultation process is described as:

“The Applicant has held several meetings with the Respondent leaseholders, on 5 September, 15 September, 26 September 2022, 10 October 2022 and 11 November 2022.

The Applicant subsequently followed up those meetings with letters to the Respondents on 26 August 2022, 15 September 2022, 30 September 2022, 14 October 2022 and 9 November 2022.

A stage 1 consultation notice was sent to the Respondent leaseholders on 30 September 2022. These sought responses within an abridged period of five days, ending on 5 October 2022.

Each of the Respondents replied to the Stage 1 notice within the five-day period. No objections to the abridged period were received and each Respondent has confirmed that they do not wish to nominate a contractor to carry out the works.

Tender documents for the works have been prepared the project put out to tender on 11 October 2022. The tender closed on 28 October 2022.

Only two tenders were received by the Applicant, from Rowland Stone Masonry and SCS Southwest Limited. Kirkham Board instructed by the Applicant prepared a Tender Report dated 4 November 2022 which the Applicant sent to the Respondents on 9 November 2022.

A stage 2 consultation notice was sent to the Respondent leaseholders on 9 November 2022. These sought responses within an abridged period of seven days, ending on 16 November 2022. The reason for abridging the time for responses under the Stage 2 consultation notice was so that the contract could be awarded to the [sic] successful contractor in good time so that the contractor would be able to commence works on site in January 2023.

Two of the Respondents (Mary Swan and Yin Harn Lee) replied to the Stage 2 notice within the seven-day [sic] period. No objections to the abridged period were received and each Respondent expressed a preference that the Applicant appoint Rowland Stone as its contractor, Rowland Stone having provided the lower cost tender return. No written response was received from the third Respondent, Keith Ritchings.

The Applicant is looking to award the contractor with Rowland Stone during December 2022 to start on site as soon as possible in the new year.”

5. Dispensation is sought because:

“In 2021 it was noticed that the ashlar masonry facing on the front of the Property around the central window at first floor level was bowing outwards.

Repair and maintenance of the structure and exterior of the Property is the obligation of the Applicant under the three long residential leases in the Property.

The Applicant initially anticipated that repairs to the Property would be straightforward and inexpensive and no section 20 consultation was instigated. However, once the remedial work was started in January 2022, and sections of the masonry facing were removed to expose the core wall, it became apparent the core wall was crumbling (and was responsible for bowing out the masonry facing) The Applicant commissioned a structural surveyor's report that concluded that the core wall was in a structurally unsafe condition and recommended a full-scale set of remedial works be undertaken at the earliest opportunity.

The Applicant considers that the urgent need for the works does not allow time for a full consultation process. The Applicant is, nonetheless, committed to an abridged consultation process and to keeping leaseholders (the Respondents) fully informed and involved.

The Applicant does not believe that the Respondents will be prejudiced by its inability to carry out a full consultation process. In particular, the extent, quality, and cost of the works will not be affected by the lack of a full consultation (bearing in mind the abridged consultation process that the Applicant is conducting).

The Applicant therefore seeks dispensation from the requirements of a full consultation process on the basis of the consultation exercise described in Box 2, above.

The Applicant does not seek dispensation in respect of investigative and preservation works carried out up until 15 September 2022, or for the temporary propping works, as it will not seek to recover the costs of those works through the service charge. The Applicant is content for this to be made a condition of dispensation.

The Applicant has also committed to meeting the costs of the Respondents obtaining legal advice (up to £3,000). The Applicant is, again, content for this to be made a condition of dispensation."

6. The Tribunal made Directions on 6 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. On 22 February 2023 the Applicant confirmed that the Tribunal's Directions had been served

on the Respondents and on 17 March 2023 it was confirmed that no objections had been received.

7. Three replies were received from Lessees both agreeing to the application. 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 5 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. As explained above, the Applicant carried out a form of consultation with reduced response times and awarded the contract to the lower of two quotations.
- 14. In this case three Lessees have indicated their support for the application and no objections have been received. 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;
 - 1 . *Take down and preserve the existing masonry facing.*
 - 2. *Take down the core wall in its entirety and construct a new block inner wall.*
 - 3. *Re-fix the preserved masonry facing to the new block inner wall.*

4. All floors, roofs, party walls and return walls to be fully supported and braced back into the designed scaffold for the duration of the works.

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
30 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.