



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

<b>Case Reference</b>	:	CHI/21UD/LDC/2023/0050
<b>Property</b>	:	376 Old London Road, Hastings, East Sussex TN35 5BB
<b>Applicant</b>	:	Mr Roy Youssof
<b>Representative</b>	:	
<b>Respondent</b>	:	Mr Roy Youssof (Flat A)  Mr W Maguire (Flat B)
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal member</b>	:	D Banfield FRICS, Regional Surveyor
<b>Date of Decision</b>	:	31 May 2023

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**DECISION**

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The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising the rebuilding of a front bay.

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

The Tribunal will send a copy of this decision to Mr Maguire.

## 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 25 April 2023.

2. The property is described as:

“a 3-STOREY BUILDING CONSISTING OF A GROUND AND FIRST FLOOR FLAT AND A LOWER GROUND FLOOR GARDEN FLAT.”

3. The Applicant explains that:

“Dispensation is beign [sic] sought so we can start the works sooner that [sic] carrying out the Section 20 procedure which can take up to 3 months.

The works are of a structural nature consisting in the main of the rebuilding of a front bay and works to the meter cupboard in the lower ground floor and we wish to commence now that the weather has improved.”

4. Further,

“we intend to provide the leaseholders with the Schedule of works, get their agreement to the works, and ask for their preferred contractor to quote - as we would under Section 20, but are also seeking a fast track procedure so we can start sooner”.

5. Dispensation is sought,

“..... in order to speed up the works. There are additional works which were uncovered when the first floor leaseholder starting updating the flat when the tenant moved out, and these al [sic] happen to be of a structural nature so are urgent for the safety of the building. The cracked cellar ceiling was discovered by our surveyor on a visit pre xmas.”

6. In answer to a query from the Tribunal, the Applicant clarified his application in an email of 4 May 2023 and confirmed that the application was only for the works to the “window bay to the ground floor and basement flat.

7. The Tribunal made Directions on 10 May 2023 setting out a timetable for the disposal. The Tribunal sent them to the parties together with a form for the Leaseholder to indicate to the Tribunal whether he agreed with or opposed the application and whether he requested an oral hearing. If the Leaseholder agreed with the application or failed to return the form he would be removed as a Respondent although he would remain bound by the Tribunal’s Decision.

8. No reply was received and no requests for an oral hearing was made. 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 2 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. 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 comprising the rebuilding of a front bay.
- 16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 17. The Tribunal will send a copy of this decision to Mr Maguire.

D Banfield FRICS  
31 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](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.