



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

<b>Case Reference</b>	: CHI/45UC/LDC/2023/0063
<b>Property</b>	: 55 – 57 High Street, Arundel, West Sussex, BN18 9AJ
<b>Applicant</b>	: Simon Birch
<b>Representative</b>	: JMW Solicitors LLP
<b>Respondent</b>	: Paul Meredith Michaela Jade Meredith Gillian Margaret Cutts Parminder Kaur Evans Emma Louise Penn
<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>	: 26 July 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 emergency and follow up drainage works already completed, the provision of scaffolding, repointing the rear elevation only, repairs to reveals and brickwork, sealing the masonry and removal of waste.

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

## 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 1 June 2023.
2. The property is described as a:

“Three storey converted building comprising:  
(a) a commercial unit and one flat on the ground floor  
(b) two residential flats on the first floorl (sic)  
(c) two residential flats on the second floor; and  
(d) two residential flats on the third floor.”
3. The Applicant explains that the application should be treated as urgent as:

“The freeholder has been expending £15,000 per week from his personal funds since the beginning of April to effect these urgent repairs.”
4. The Applicant has provided a comprehensive document dated 26 May 2023 outlining the grounds for the application, the qualifying works involved and the reasons for seeking dispensation.
5. At paragraph 29 of the document retrospective dispensation is sought for;
  - The Emergency Drainage Works
  - The Drainage Follow Up Works and
  - The Scaffolding Work.
6. At paragraph 30 the Applicant seeks prospective dispensation for “The Proposed Works”. Those works are said to be defined above which the Tribunal concludes to be those referred to in paragraph 26 and for which quotations have already been received. These works comprise repointing the rear elevation only, repairs to reveals and brickwork, sealing the masonry and removal of waste.
7. The Tribunal made Directions on 23 June 2023 setting out a timetable for the disposal. The Tribunal sent 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. If the Leaseholders agreed with the application or failed to return the form they would be removed as a Respondent although they would remain bound by the Tribunal’s Decision.
8. Two replies were received one of which agreed with the application and one in opposition. 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 2 to 4 above.

13. Mr Paul Meredith, the lessee of flats 5 and 6 objected in the following terms;

*"I own two flats one in 55 and one in 57 Mr Birch had asked for dispensation concerning works under the above ref, all works have been checked over by the Collet surveyors report, in my opinion none of these works are urgent I agree that the rear elevation should be repointed this summer as pointed out in the collet report.*

*As for any further works to less weathered areas of the building IE east and west elevations where minor pointing needs attending to this could be fazed (sic)in over two years thus keeping the large bills expected to arise from the major works intended by the freeholder.*

*It has been noted that the freeholder since buying the building at auction in March 2023 has gone full on to erect some six weeks ago scaffold to the rear elevation, as yet now works have taken place the Freeholder Mr Birch e mailed all leaseholders in April to tell us that he was going to apply for dispensation told us the works he was going to undertake with out any consultation with us the leaseholders.*

*We all know as leaseholders that the works are required to keep our building in good order, the amount each leaseholder will have to pay is way in excess of 20,000 thousand per leaseholder in my opinion these works should go through the proper consultation period to give all leaseholders time to digest and have there (sic) opinions noted that's the proper process.*

*The works should be fazed (sic)in over 3 years this would give all leaseholders the chance to organise financial arrangements after all we are in cost of living crises."*

## **Determination**

14. 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.
15. Whilst urgency may be a factor in a decision to apply for dispensation it is not a necessity and lack of it is not a factor in the Tribunal's determination. The issue is whether the lessees have demonstrated that solely due to the lack of consultation they have been prejudiced.
16. The rights that lessees will forgo if dispensation is granted may be summarised as; having their views considered, but not necessarily accepted by the landlord, the requirement for competitive tenders to be obtained and the right to nominate a contractor.
17. In this case it appears that competitive tenders were obtained from 3 builders and 3 scaffolders and the Respondent provided a nomination and as such that potential for prejudice falls away. Neither party has thought to provide a full copy of the Collet survey report referred to and whether or not some elements could be delayed is not therefore an issue that I am able to consider.
18. What remains therefore is the loss of the right to make representations to the Applicant.
19. The only issue raised by the Respondent is the timing of the works and I am not satisfied that whether consultation took place or not that the outcome would be varied by the Applicant who no doubt is fully aware of the impact on the lessees of incurring significant costs.
20. I am not therefore satisfied that the failure to go through the full consultation process has in itself resulted in prejudice to the lessees and as such the Tribunal is prepared to grant dispensation.
21. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising emergency and follow up drainage works already completed, the provision of scaffolding, repointing the rear elevation only, repairs to reveals and brickwork, sealing the masonry and removal of waste.
22. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
23. The Tribunal will send copies of this determination to the lessees.

## 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.