



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

Case Reference	: CHI/21UC/LDC/2023/0087
Property	: Ashbourne Court, Burlington Place, Eastbourne BN21 4AX
Applicant	: Ashbourne Court (Eastbourne) Limited
Representative	: Stredder Pearce
Respondent	: The Leaseholders
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
Date of Decision	: 8 August 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising the replacement of the calorifier in the hot water system.

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

The Applicant must send copies of this determination to the lessees.

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 18 July 2023.
2. The property is described as:

“..... a purpose built block containing 10 long-leasehold flats. The freehold is owned by a Residents' Management Company, the 10 leaseholders being the only shareholders in the Company.

The property has a communal heating system and hot water system serving all ten flats.”
3. The Applicant explains that:

“The calorifier which is part of the hot water system for the block has split with the result that the property will not have any hot water until the unit is replaced. Several of the leaseholders are elderly and it is imperative that hot water is restored as a matter [sic] of urgency. The contractor who maintains the heating and hot water system has been instructed to replace the calorifier and the work is expected to be carried out imminently. The cost of the work exceeds the Section 20 consultation threshold.

In view of the urgency of the work it has not been possible to undertake Section 20 consultation as an order for the replacement of the unit was issued immediately.

Efforts were made to speak to all occupiers/leaseholders at the property to advise them of the situation and all leaseholders who are not in permanent residence have been contacted by telephone.”
4. Dispensation is sought because:

The provision of hot water is essential for day to day living requirements and the timescales for responses which have to be provided under Section 20 consultation would be totally unworkable, given the urgency of the situation. Any delay in the reinstatement of the provision of hot water would require a number of leaseholders to find alternative accommodation.
5. The Tribunal made Directions on 20 July 2023 setting out a timetable for the disposal. The Tribunal required the Applicant to send them to the lessees together with a form for them 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.

6. Seven replies were received all of which agreed with 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.
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.

Determination

- 11. 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.
- 12. The works were clearly required as a matter of urgency and no lessee has objected to the application.
- 13. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising the replacement of the calorifier in the hot water system.
- 14. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 15. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
8 August 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.