



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

Case Reference	: CHI/43UD/LDC/2023/0005
Property	: Chaucer House, Upper Edgeborough Road, Guildford, Surrey, GU1 2BD
Applicant	: Edgeborough Heights Management Company Limited
Representative	: Patrick Gardner Management Company Limited
Respondent	: The Leaseholders
Representative	:
Type of Application	: Dispensation with consultation requirements
Tribunal member	: D Banfield FRICS
Date of Decision	: 23 August 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the entire lead gutter and repointing of the valley.

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. This retrospective application was received on 18 January 2023.
2. By an email dated 20 January 2023 the Tribunal requested a sample copy of the lease, confirmation that all leases were in the same format and a list of all service charge payers.
3. The Applicants failed to supply the information requested and the Tribunal issued a notice on 22 May 2023 confirming it was minded to strike out the application in accordance with Rule 9(3) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 unless the Applicants supplies the requested sample of the lease, confirmation that all leases were in the same format and a list of all service charge payers by 4pm on 31 May 2023.
4. The requested information was provided by the Applicant by email on 23 May 2023.
5. The property is described as a “Purpose built block of 12 flats with pitched roofs.”
6. The Application provides a description of the qualifying works:

“Replacement of entire lead gutter and repointing of the valley”

And the consultation that has been carried out:

“Have discussed issue with Directors of MCL and they have stated due to the leaks ongoing to go ahead with the works ASAP”

And further:

“Large leak from the roof affecting 2 flats currently with larges (sic) of damp and mould in the bedrooms.”

7. The Tribunal made Directions on 15 June 2023 setting out a timetable for the disposal together with a form for the lessees to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. The Applicant was required to send this to the Lessees and to confirm to the Tribunal that they had done so. 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. The Applicant confirmed on 27 June 2023 that the directions had been served in response to which four replies were received by the

tribunal 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.

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 5 and 6 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. It was clearly necessary to prevent further water ingress as soon as possible and to avoid the inevitable delay that carrying out a full consultation would entail. No lessee has objected to the application.
- 15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the entire lead gutter and repointing of the valley.
- 16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 17. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
23 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.