



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

<b>Case Reference</b>	:	CHI/21UC/LDC/2023/0026
<b>Property</b>	:	Various Properties of Eastbourne Borough Council
<b>Applicant</b>	:	Eastbourne Borough Council
<b>Representative</b>	:	Eastbourne Homes Ltd
<b>Respondent</b>	:	The Lessees
<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>	:	5 December 2023

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**DECISION**

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The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of entering into a 3-year contract for the provision of property insurance.

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

The Applicant is to make the Tribunal's decision available to each lessee to whom directions were sent.

## Background

1. The Applicant sought 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.
2. The Application related to 666 leasehold properties that are owned by Eastbourne Borough Council in “*varying sizes and archetypes*”. Some are shared ownership houses and flats. The application concerned a qualifying long-term insurance agreement that had yet to be entered into.
3. The Applicant states that:

*” The Council engages a separate Buildings Insurance policy provider for its Leasehold stock. Unfortunately it has just informed the Council that it will no longer be able to provide cover from 1st April 2023 due to capacity issues in property insurance market. This level of notice is unprecedented and totally unexpected.*

*The average premium per unit under the current policy is approximately £77.00, with only 9 dwellings paying over £100/annum currently [sic]. We anticipate than any market engagement now could result in an very significant increaease [sic] which would push the premiums above the consultation [sic] threshold.”*
4. Dispensation is sought:

*“Due to this sudden notice from our insurers, the 1st April 2023 deadline does not give the Council enough time to follow statutory consultation timelines.”*
5. The Applicant confirms:

*“We plan to write to all affected Leaseholders to explain why we are approaching the Tribunal for a determination. We will also write to them on conclusion of the quotes and explain the rational for coosing [sic] a particular provider.”*
6. Directions were issued on 23 March 2023 setting out the dates for compliance by the parties with the matter being determined on the papers unless any of the parties objected to the application, in which case the matter was to be listed for hearing on 16 May 2023.
7. Objections were received and so the hearing took place on 16 May 2023. Only the Applicants were in attendance.
8. Following submissions from the Applicant, it became clear that the basis of the application had materially changed as a different insurance contract to the one mentioned in the original application was now being

sought. The Tribunal noted that the lessees were unaware of the change of circumstances.

9. The hearing was adjourned and the Tribunal directed that Applicant file and serve an amended application and that the hearing would be relisted upon receipt of this.
10. As an amended application was not forthcoming and there had been no contact from the Applicant (save for a procedural query on 19 May 2023), the Tribunal issued a Notice on 2 August 2023 that it was minded to strike out the Application. The Applicant was ordered to confirm that a copy of the Notice had been served on all Respondents by 11 August 2023 and representations from all parties were to be submitted by 22 August 2023.
11. On 10 August 2023, the Applicant submitted a fresh dispensation application, copies of the insurance summary and the Tribunal's Notice. It stated that this was being sent to the Respondents. On this occasion the Application was to enter into a 3-year contract for the provision of property insurance.
12. The Tribunal made Further Directions on 14 August 2023 in respect of the revised application from Eastbourne Borough Council. On this occasion no objections were received and no requests for an oral hearing have been made. The application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.
13. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.
14. Before proceeding to make this determination the hearing bundle was examined and I am satisfied that in the absence of any objections from the Lessees the Tribunal is able to determine the matter without the need for an oral hearing.

## **The Law**

15. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) 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.

16. 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 (1) 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**

17. The applicant's case is as set out at paragraphs 3,4,5 and 11 above.

### **Determination**

18. The test that I must apply in determining whether dispensation may be given is that set out by the Supreme Court in the Daejan decision referred to above. No objections have been received from Lessees and therefore no case of prejudice has been made.

19. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of entering into a 3-year contract for the provision of property insurance.**
20. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
21. **The Applicant is to make the Tribunal's decision available to each lessee to whom directions were sent.**

D Banfield FRICS  
5 December 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.