



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

Case Reference	: CHI/00ML/LDC/2023/0071/AW
Property	: Cumberland Court, 150-151 Kings Road, Brighton BN1 2PJ
Applicant	: Safecentral Property Management Limited
Representative	: Sawyer & Co Block Management
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	: 14 August 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof repairs as referred to in the specification provided to the lessees and the subject of the Notice of Intention served by the Applicant.

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 29 June 2023.
2. The property is described as,

“..... TWO FIVE STOREY PROPERTIES WHICH HAS BEEN CONVERTED INTO TEN SELF CONTAINED FLATS. IT COMPRISES OF A LOWER GROUND, GROUND AND THREE UPPER FLOORS, LIKELY TO HAVE BEEN BUILT IN THE MID-1800'S. IT IS BUILT IN THE TYPICAL MANNER FOR THAT PERIOD COMPRISING OF SOLID EXTERNAL WALLS, TIMBER SUSPENDED UPPER FLOORS SUPPORTED ON AN ARRANGEMENT OF INTERNAL LOAD BEARING WALLS.”
3. The Applicant explains that there have been,

“SEVERE LEAKS INTO MULTIPLE FLATS RESULTING IN POOR LIVING CONDITIONS AND DETERIORATION OF THE INTERNAL CONDITION OF THE FLATS.
4. The works are described as,

“Scaffolding, replacement of front mansard and box gutter, repairs to timbers of box gutter and head of front elevation, repairs to dormers and installation [sic] of lead trays. Specification of works attached for full details.

We have served a notice of intention and the surveyor is currently obtaining tenders.”

The Tribunal has not been provided with the the specification of works..
5. Dispensation is sought,

“In order for works to commence as soon as possible to avoid further damage to the flats.”
6. The Tribunal made amended Directions on 28 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.

7. The Applicant confirmed on 28 July 2023 that the Directions had been served and on 10 August 2023 that no objections had been received.
8. 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 2,3 and 4 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. The works were clearly required as a matter of urgency and 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 roof repairs as referred to in the specification provided to the lessees and the subject of the Notice of Intention served by the Applicant.
- 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.

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.