



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

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| Case Reference | : | CHI/00ML/LDC/2023/0084/AW |
| Property | : | 9 Portland Place, Brighton, East Sussex, BN2 1DG |
| Applicant | : | Southern Land Securities Ltd |
| Representative | : | Together Property Management |
| Respondent | : | Mr Edwards – Lower Ground Floor Ms Winters – Ground Floor Mr Lloyd – First Floor Mr Pearce – Second Floor Dotsquare Properties Ltd – Third Floor |
| 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, Regional Surveyor |
| Date of Decision | : | 29 August 2023 |

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof and associated works as described in the earlier S.20 consultations referred to.

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 14 July 2023.

2. The property is described as:

“The development located very close to the sea front is a mid-terraced property constructed circa 1880 over basement, ground and three upper floors with the top floor being an additional Mansard to the original building.”

3. The Applicant explains that:

“We actually went through the entire Section 20 process for this work and were waiting for a start date from the contractor when the contractor came back to us and advised he could no longer undertake the work.

We had to obtain alternative quotations (sic) for the work, unfortunately there was quite an increase in the cost however due to the time of year we were getting a lot more rain and the work could now not wait. The water ingress was initially just affecting one flat but since the rain started again was affecting 3 as well as the communal hallway. Damage then started to occur at the front of the property in the second floor and first floor flats, we had not (sic) choice to erect scaffolding and undertake the necessary repairs. We wrote to advise Leaseholders of the new cost of the works and kept them updated on when the work would take place.”

4. The qualifying work are described as:

“scaffold erection at the rear of the property
Replacement of x5 hoppers.
Replacement of x3 downpipes and guttering pipes.
Replacement of pipework bracketry.
Rearrangement of existing guttering to drain away to the correct locations (IE not discharging onto window heads and flat roofs).
Cleaning and clearing out (sic) & Relining of rear box gutter.
Sealant application where required for smaller voids (IE windows and smaller voids found on the building fabric).
Clearing & cleaning out of the internal box gutter adjoining to the front and rear box gutters.
Re-felting of lower flat roof and sides/flashings of Velux window.
Repairing of rear & rear return walls pipework voids with new cement.
Localised Redecoration after new cement work.
Replacement of approximately 60 roof tiles.

Erect full height scaffold up to roof & box gutter level at the front of the property
Re-line lead box gutter and liquid membrane
re-line other box gutter (sic) and replace roof tiles”.

5. And further:

“We are seeking dispensation as when we were in a position to go ahead with the works following section 20 it was October/November time and therefore we were getting a lot of rain which was leaking in to the second floor flat, first floor flat and the communal hallway causing considerable damage. We could not wait to go through the process again with the new costs and made Leaseholders aware of this and our intention to make a FTT applicaiton (sic). Damage then started to occur at the front of the property in the second and first floor flats we had no choice but to erect scaffolding and undertake the necessary repairs externally to stop any further damage within the flats.”
6. The Tribunal made Directions on 20 July 2023 and sent them to the parties 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. 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. Two replies were received by the tribunal both 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.
8. 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

9. 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.
10. 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

- 11. The Applicant's case is set out in paragraphs 3 to 5 above.

Determination

- 12. 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.

13. 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.
14. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of roof and associated works as described in the earlier S.20 consultations referred to.
15. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
16. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
29 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.