



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

Case Reference : CHI/29UP/LDC/2023/0129

Property : Magellan, Mortley Close, Lyons Wharf,
Tonbridge, Kent, TN9 1ET

Applicant : Lyons Wharf (Tonbridge) Management Ltd

Representative : Alexandre Boyes
jamie@alexandre-boyes.co.uk

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

Legal Officer : W H Gater FRICS
Regional Surveyor

Date of Decision : 5 December 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works required to secure the facade and coping stones.

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

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 October 2023.
2. The property is described as a:

“Purpose built block of 20 flats.”
3. The Applicant explains that:

“Works are required to secure the facade and coping stones urgently, to remove the risk to residents and property should there be further movement or adverse weather.”
4. And further:

“Due to safety risk to residents we aim to complete the work as quickly as possible before the incoming winter might further deteriorate the building or cause issues for contractors.”
5. Regarding consultation the Applicant states “Section 20 consultation has not commenced as we wish to complete work as quickly as possible to avoid any risks to residents, considering the time of year and increased poor weather.”
6. The Tribunal made Directions on 27 October 2023 which were sent 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. Responses were received from the following Leaseholders, all of whom agreed with the proposal.
 - Lynda Griffiths Flat 12
 - Lisa Bell Flat 19
 - Colin Dennis Ward Flat 3
 - Stella Denise Morre Flat 5
 - Michael John Snelling Flat 7
 - Pauline Anne Burles Flat 8
 - Hilda Mary Chatting Flat 9
 - Clive Batson Flat 13
 - David Charles William Woledge Flat 15

8. 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 paragraph 2 to 5 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. No objections have been received from the lessees. I am satisfied that the works are urgent and that the Leaseholders would not be prejudiced by the grant of a dispensation. In these circumstances, I am prepared to grant conditional dispensation.
- 15. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works described in the application.**
- 16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 17. The Tribunal will send copies of this determination to the lessees.

W H Gater 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 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.