



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

**Case reference** : **CHI/29UM/LDC/2023/0150**

**Property** : **301 High Street, Sheerness, Kent ME12  
1UT**

**Applicant** : **Influential Consultants Limited**

**Respondent** : **Featurekey Properties Ltd (301a & 301c)  
Ms C M Willens (301b)**

**Type of Application** : **Application for the dispensation of  
consultation requirements pursuant to  
S.20ZA of the Landlord and Tenant Act  
1985**

**Tribunal Members** : **Judge Hugh Lumby**

**Venue** : **Paper determination**

**Date of Decision** : **13<sup>th</sup> December 2023**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

### **The background to the application**

1. The Property is an end of terrace Victorian semi-detached house with back addition which has been converted into three self-contained residential units.
2. There has previously been a section 20 consultation relating to the removal of defective render, re-rendering and redecorating the exterior of the Property. When the defective render was removed from the rear elevation of the back addition to the Property, it was noted that the brickwork to the ground floor French window with side lights was defective and potentially a structural issue. In addition, the lintel appeared defective as there was visible cracking to the brickwork above, the lintel was of unknown strength and appeared to have insufficient bearing upon the brickwork reveals beneath. As a result, the Applicant states that it is necessary to replace the existing lintel as specified by a structural engineer; in addition, the window reveals will need to be rebuilt with sufficient strength to support the new lintel. A structural engineer has inspected the defects and provided a specification for the necessary works.
3. These proposed works were not visible at the time of the earlier consultation and hence were not included in that consultation process. For the same reason, they are not included within the scope of work for the contractor carrying out the works.
4. That contractor has provided an estimate for the additional works of £7,008 including VAT. The Applicant considers that it will be cost and time effective for the works to be carried out by that contractor as it is currently on site. The Applicant states that the contractor's estimate has been prepared in accordance with the structural engineer's specification and recommended by the project manager.
5. The application is said to be urgent as the contractor cannot complete the works the subject of the previous section 20 consultation until the defects referred to above are remedied. Any delay in the works will result in increased costs.
6. Whilst no consultation has been carried out, each of the leaseholders comprising the Respondent have been made aware of the application to seek dispensation and have responded giving agreement.

7. By Directions of the Tribunal dated 21 November 2023 it was decided that the application be determined without a hearing, by way of a paper case. The parties have agreed with this decision.
8. The Tribunal did not inspect the property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
9. This has been a paper determination which has been consented to by the parties. The documents that were referred to are the Applicant's application, the specimen lease provided with it, plus the Tribunal's Directions dated 21 November 2023 and the leaseholders' responses to these, the contents of which has been recorded.

### **The issues**

10. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

### **Law**

11. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
12. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
13. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
14. Section 20ZA relates to consultation requirements and provides as follows:

*"(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.*

(2) In section 20 and this section—  
“qualifying works” means works on a building or any other premises,  
and “qualifying long term agreement” means (subject to subsection (3))  
an agreement entered into, by or on behalf of the landlord or a superior  
landlord, for a term of more than twelve months.

....

(4) In section 20 and this section “the consultation requirements” means  
requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision  
requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the  
recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the  
names of persons from whom the landlord should try to obtain other  
estimates,

(d) to have regard to observations made by tenants or the recognised  
tenants’ association in relation to proposed works or agreements and  
estimates, and

(e) to give reasons in prescribed circumstances for carrying out works  
or entering into agreements.

15. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
16. The Supreme Court came to the following conclusions:
  - a. The correct legal test on an application to the Tribunal for dispensation is: [L11]“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
  - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
  - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
  - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:

- i. what steps they would have taken had the breach not happened and
  - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

### **Consideration**

17. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows
18. The Tribunal is of the view that, taking into account that there have been no objections from the leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the proposed works to replace the existing lintel and rebuild the window reveals in accordance with the structural engineer's specification and as set out in the application.
19. The Tribunal was mindful of the fact that the works proposed to be undertaken by the Applicant will be in accordance with the structural engineer's recommendation.
20. The Applicant believes that the works are urgent to allow the other works to proceed and to avoid additional cost. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
21. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas.

### **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)
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.