



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

Case Reference	: CHI/21UG/LDC/2023/0146
Property	: 86 High Street, Rye, East Sussex, TN31 7JN
Applicant	: Hainault Investments Ltd
Representative	: Trevor Gooding Rosalind Gooding
Respondent	: The Leaseholders Mr & Mrs Bremner – Flat 1 Mr M Baker – Flat 2
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	: 4 December 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the sewage system.

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. Separate applications for flats 1 & 2 were received on 15 October 2023, they will be dealt with together.
2. The property is described as “A terraced Timber framed historic building, Grade 2 Listed. Flat 1 on the first floor is responsible for 30% of service costs. Please refer to the attached Long Lease Agreement.

Flat 2 on the second floor is responsible for 30% of service costs. Please refer to the attached Long Lease Agreement.”
3. The Applicant explains that,

“The ancient sewage system failed with raw sewage falling into the basement and the oversite on the 8th December 2022.
This immediately became an environmental matter regarding health and safety, therefore, we could not comply with a Section 20 Notice, because the broken drains had to be attended to immediately.
The works were carried out between Friday 8th December 2022 & 22nd December 2023

Mr & Mrs Bremner were advised immediately on the 8th December 2022 and kept up-to-date with the works progress.

Mr M. Baker was advised immediately on the 8th December 2022. He was kept up-to-date of the works progress.
As Mr Baker's wife was expecting their baby within a matter of days, so they could not move out and remained living in the property. Therefore, the works had to be expedited due to the health and safety risks involved.

These works were an emergency due to raw sewage and urine flooding the basement and oversite.
Broken sewage pipes.”
4. The Tribunal made Directions on 13 November 2023 which it 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.
5. No responses were received and no requests for an oral hearing were made. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.

6. 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

7. 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.

8. 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

- 9. The Applicant's case is set out in paragraph 2 and 3 above.

Determination

- 10. 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.
- 11. No objections have been received from the lessees and in these circumstances I am prepared to grant conditional dispensation.
- 12. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the sewage system.**
- 13. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 14. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
4 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 rpcsouthern@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.