



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

Case Reference	: CHI/21UD/LDC/2023/0114
Property	: 1-2 Villa Road, St Leonards On Sea, East Sussex, TN37 6EJ
Applicant	: 1) Daniel Charles Hampton Bennett 2) Margaret Elizabeth Moore
Representative	: Daniel Charles Hampton Bennett
Respondent	: Sophie Louise Robinson – Flat 1
Representative	: None
Type of Application	: To dispense with the requirement to consult lessees about major works S.20ZA Landlord and Tenant Act 1985
Tribunal Member	: D Banfield FRICS, Regional Surveyor
Date of Decision	: 8 January 2024

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of External decoration to all elevations, to include patch repair to any blown or cracked render, painting of all external walls and wooden windows. Repair to boundary and retaining walls.

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

1. An application seeking retrospective dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“1985 Act”) from the consultation requirements imposed on the landlord by section 20 of the 1985 Act was received by the Tribunal on 15 September 2023.
2. The property is described as a

“Victorian end terrace converted into 7 flats. Situated on an exposed corner plot in the St Loeanards-on-Sea (sic) conservation area.”
3. The Applicant describes the qualifying works as

“External decoration to all elevations, to include patch repair to any blown or cracked render, painting of all external walls and wooden windows. Repair to boundary and retaining walls.

Completed September 2022.”
4. And further

“The need for the works to be carried had been discussed amongst those leaseholders that took and (sic) active interest in the maintenance of the building over an extended period. Quotes had been provided by one of the leaseholders. These were considered but both were significantly more expensive than the contractor that was finally instructed.

A request to take the opportunity to add external insulation had also been proposed, whilst not without merit this solution was rejected on the basis that it would constitute an improvement rather than maintenance, therefore not allowed for in the leases, and would have required planning consent which would likely have been declined.

There was general agreement on both the need for the works, and on who the preferred contractor was, Sean Kibbey. Sean had re-decorated the rear elevation in 2017 and the work considered, good value.

The building was in a poor state of repair with blown and cracked rendering possibly causing damp ingress, and loose brickwork and coping on the front boundary and retaining walls a danger to pedestrians and people entering the building.

When Sean unexpectedly became available in September 2022 likely the last opportunity to start external re-decoration before the weather turned, I considered it in the best interests of all the leaseholders to take the opportunity to instruct him without delay.

Although there had been considerable verbal discussion amongst the leaseholders regarding the arrangement of these works, the above statements are supported by email correspondence with several of the leaseholders.

I owned 50% of one of the leasehold flats in the building at the time (now 100%) and collect no management fees so have an incentive to minimise costs for all leaseholders.”
5. On 28 September 2023, the Tribunal issued Directions which included, at paragraph 14, a requirement that the Applicant reply to any objection by 1 November 2023, a copy of which was to be included within the

determination bundle. Furthermore, at paragraph 17 of the Directions the Applicant was required to submit one copy of the agreed bundle of relevant documents electronically to the Tribunal and to the other party by 8 November 2023.

6. Paragraph 19 of the Directions stated that where objections to the application are submitted and the hearing bundle is not sent to the Tribunal by the said date or is not in the required format the application will be struck out.
7. On 16 October 2023 one of the Respondents, Sophie Robinson of Flat 1, submitted an objection to the application to the Tribunal, copied to the Applicant.
8. Contrary to paragraph 14 of the Directions the Applicant failed to reply to the objection by 1 November 2023. Furthermore, contrary to paragraph 17 of the Directions, the Applicant failed to submit a copy of the agreed bundle of documents to the Tribunal by 8 November 2023.
9. In an Order dated 13 November 2023 and in accordance with the Directions the Tribunal struck out the application in accordance with Rule 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that the Applicant has failed to comply with a direction that stated that failure to comply with the direction by a stated date would lead to the striking out of proceedings.
10. The Order also stated that the Applicants may apply for reinstatement of the application under Rule 9(5) of the Tribunal's Procedural Rules which they have now done stating that they had misunderstood the Directions and were waiting for an invitation to respond.
11. The Tribunal accepted this explanation and reinstated the Application making further directions dated 12 December 2023.
12. The Directions were complied with and a hearing bundle has been received containing a response to Ms Robinson's objection.
13. 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.
14. 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 Respondent's objection is clearly set out in her submission.

The Law

15. 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.

16. 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

17. The Applicant's case is set out in paragraphs 2,3 and 4 above.
18. The Respondent makes the following objections;

- Works were not urgent
 - S.20 not complied with
 - Two quotes obtained by the Respondent never shared amongst other lessees
 - As no S20 Notices served only £250 may be obtained from each leaseholder
19. In a reply the Applicant says that;
- The quotes obtained by the Respondent were more expensive than that chosen
 - The chosen contractor was known to several of the leaseholders and had worked on the building before
 - Ms Robinson was the only objector, accepted that the work was required and thought the final price reasonable
 - Information was provided to Ms Robinson's solicitors prior to her purchase but in any event this is irrelevant to whether she has suffered financial prejudice by not being consulted.

Determination

20. 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.
21. Urgency is not a requirement as to whether dispensation should be granted. The issue is simply whether by not being consulted the Respondent has suffered prejudice. The Applicant accepts that he did not comply with S.20 which is his reason for now seeking dispensation from that requirement.
22. I do not find anything in Ms Robinson's submissions indicating that she has suffered prejudice and as such I am prepared to grant dispensation.
- 23. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of External decoration to all elevations, to include patch repair to any blown or cracked render, painting of all external walls and wooden windows. Repair to boundary and retaining walls.**
24. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
25. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
8 January 2024

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.