



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

Case Reference	: CHI/21UC/LDC/2023/0168
Property	: Baslow Court, 25 Baslow Road, Eastbourne, East Sussex, BN20 7UL
Applicant	: Baslow Court (Eastbourne) Management Company Ltd
Representative	: Prestige Property Management Ltd
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
Tribunal member	: D Banfield FRICS, Regional Surveyor
Date of Decision	: 11 January 2024

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of replacement of the sea facing roof slope.

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 7 December 2023.
2. The property is described as,

“Baslow Court is a purpose built residential block of 11 flats, over 4 floors, constructed in the early 1960's, occupying a sloping site in the Meads area of Eastbourne.

Prestige Property Management Ltd have managed the property on behalf of Baslow Court (Eastbourne) Management Company Ltd, Company Registration 08757571 since 2019.”
3. The Applicant explains that,

“In December 2022, following several storms and a prolonged spell of heavy driving rain severe damage was discovered in the roof spaces above flats 10 & 11 (penthouses), the rain had found its way underneath the tiles and blown the sarking felt, which acts as a second line of defence. One half of the roof (road facing) was replaced, please see our previous S20ZA application.

The other half of the roof (sea facing) has now failed, the sarking felt is bowed and split in numerous places, tiles are fractured and missing. Due to the recent persistent wet and extremely windy weather water is again entering the roof space cavity, directly above the master bedroom of flat 11, penthouse, also above the communal landing area and the en-suite bathroom of flat 10, penthouse. This work is extremely urgent due to the impending risk of the water causing further damage and destruction.”

And further

“We seek dispensation for all consultation requirements as the required work is extremely urgent, the roof sarking felt has failed and is letting in water to all three roof spaces (above flats 10 and 11, and the communal landing). The damage is escalating as the persistent wet and extremely windy weather continues.

It is highly likely that the flats below will suffer severe damage if the work is not carried out at the earliest possible date. We have requested quotes from two roofing contractors, however we propose to engage P.M. SKILTON, who successfully carried out the roof repair work in January this year.”
4. The Applicant has provided copies of 2 roof reports by Prestige Property Management Ltd dated September 2023 and November 2023, along with some supporting photographs. A quotation and minutes of a recent EGM together with a list of the leaseholders of the property were subsequently provided.

5. The Tribunal made Directions on 19 December 2023 which required the Applicant to send it 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.
6. The Tribunal received six responses from lessees all agreeing to the Application. 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.
7. 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

8. 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.
9. 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

10. The Applicant’s case is set out in paragraphs 2, 3 and 4 above.

Determination

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

D Banfield FRICS
11 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.