



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

**Case Reference** : CHI/00HG/LDC/2023/0086/AW

**Property** : 5 Nelson Gardens, Plymouth, PL1 5RH

**Applicant** : Elizabeth Teixeira

**Representative** : Liskeard Property Management Ltd

**Respondent** : Elizabeth Teixeira (Flats 1, 2 & 4)  
T W Wyatt (Flat 3)  
Harmony Rump (Flat 5)  
The executors of C Yearling (deceased)  
(Flat 6)

**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

**Date of Decision** : 16 August 2023

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**DECISION**

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## **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. This retrospective application was received on 14 July 2023.
2. The property is described as:

“converted Georgian house into 6 flats. Building has rendered finish over stone / cob walls with pitched slate roof.”
3. The Applicant explains that:

“the building has suffered from water ingress that was partly dealt with by a previous manager but left considerable internal damage to Flat 2. The water ingress is via wear and tear on the building and a historic lack of maintenance. The cost of the works carried out (and to be split 6 ways) is £4,434.78 or £739.13 per unit. An (sic) alternative quote had been obtained of in excess of £9,000. The freehold lists 8 leases but the freeholder is in the process of splitting the leases away of Flats 7 and 8 as they are essentially separate

the works were organised and carried out by the freeholder when the freeholder felt that there was a gap in the weather to expedite the work and during a period when the building was not under management of an agent. The weather sealing was done in good weather and the internal works which were remedial plasterwork done as it was effecting the quality of life and health and safety of the occupants of Flat 2. I am not aware of any other leaseholder disputing the necessity of this work. The freeholder also owns the leases of 3 of the 6 effected flats.

the work was carried out whilst there was a gap in the weather and to prevent further deterioration of the building and its interior. The side of the building faces the prevailing weather and the freeholder was duly concerned that prompt action was needed in good weather to prevent any further problems from developing. The freeholder had recently completed the acquisition of the freehold and felt that this was a very high priority item to avoid further damage to the building's interior and exterior.”
4. The Tribunal made Directions on 20 July 2023 setting out a timetable for the disposal 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. One reply was received by the tribunal which agreed with the application. 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.
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 paragraphs 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. Carrying out the works during a period of good weather was clearly a sensible decision and competitive quotations had been obtained. No lessee has objected to the application.
- 12. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works required following water ingress.
- 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  
16 August 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](mailto: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.