



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

Case Reference	: CHI/24UD/LDC/2024/0002
Property	: 1-12 Whitehaugh Court, Church Road, Eastleigh, Hampshire, SO50 6DF
Applicant	: Whitehaugh Court (Bishopstoke) Residents Association Limited
Representative	: GH Property Management Services Limited
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	: 30 January 2024

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the dismantling and rebuilding of the boundary wall subject to the following conditions.

- Lessees shall be invited to nominate a contractor within 7 days of the invitation.
- Quotations to be invited from three contractors including that nominated by the lessees (if received) and the lowest accepted.

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 4 January 2024.
2. The property is described as a “Purpose built block of 12 flats”.
3. The Applicant explains that,

“A boundary brick wall 68metres in length and 3.5metres in height has partially collapsed into neighbouring gardens, the remainder of the wall is leaning into neighboring (sic) properties therefore imposing a risk to life it were to fall. The wall needs to be dismantled to make safe and rebuilt. There is a significant risk to life leaving the wall in its current state.”
4. And further,

“Section 20 would ordinarily be proposed, however we seek dispensation from doing so.

These remediation works need to take place urgently, if we follow the Section 20 procedure the works will likely not be able to take place for another three months meaning that the significant risk to life remains present.”
5. The Tribunal made Directions on 8 January 2024 which required the Applicant to immediately send copies to the Leaseholders and which they confirmed had been done on 10 January 2024.
6. Four responses were received one of whom objected to the application and is referred to below. There have been 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 sole objection is clearly made and does not require oral submissions to be made.

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 to 4 above.
11. The lessee of Flat 10 opposes the Application in the following terms;
- *"I Would like to wait for the result of any insurance claim and see what is covered in that.*
 - *I would like to be consulted on the options for remediations going forward as the cost could be significant. I would like to see several*

quotes for any work. I believe agreeing to this tribunal would mean that we would have little say in the work and the cost.

- *I would like a residents meeting to discuss this issue before any action is taken other than work covered on any possible insurance claim. This would include discussing options for the work as well as the possibility of getting it repaired as one job as soon as possible with quotes as opposed to separate jobs for temporary remediation or measures which would have their own separate cost.*
- *I would like a delay on the deadline for the tribunal and this to be discussed in the residents meeting also.”*

Determination

12. 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.
13. Although urgency is not a matter essential to granting dispensation clearly the circumstances described require an early resolution without the delay that formal consultation as required by Section 20 would require. As stated in the Tribunal’s directions granting dispensation does not mean that the costs incurred are necessarily recoverable from the lessees. That matter would be subject to challenge under S.27A of the Landlord and Tenant Act 1985.
14. Whether or not an insurance claim is successful is not relevant to the application for the reason referred to above. What is relevant however is the lessee’s reference to a need for several quotes for the work.
15. S.20 requires competitive quotations to be obtained and permits lessees to nominate a contractor both requirements providing a safeguard against unreasonable costs being incurred unnecessarily.
16. In this case whilst it is reasonable for the Tribunal to grant dispensation it is also reasonable for certain conditions to be applied in such a grant.
17. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the dismantling and rebuilding of the boundary wall subject to the following conditions.**
 - **Lessees shall be invited to nominate a contractor within 7 days of the invitation.**
 - **Quotations to be invited from three contractors including that nominated by the lessees (if received) and the lowest accepted.**

18. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
19. The Applicant must send a copy of this determination to the lessees.

D Banfield FRICS
30 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.