FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/LDC/2024/0017
Property	**:**	Haig House, Devonshire Road & Station Road, Hastings, East Sussex, TN34 1NH
Applicant	**:**	Flathold Limited
Representative	**:**	Oakfield PM Limited
Respondent	**:**	Bielskis Estates Ltd (Flat 1) Colin Grimshaw (Flat 3) Steven Croucher (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, Regional Surveyor
Date of Decision	**:**	7 February 2024

DECISION

The Tribunal grants dispensation from the consultation requirements imposed by S.20 of the Landlord and Tenant Act 1985 in respect of the repairs to the render subject to the following condition;

- 10% of the final cost of the works will not be charged to the Lessees OR, three quotations are obtained, the lowest being accepted.

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 by email on 17 January 2024.

2. The property is described in the application,

> "Haig House is a mixed-use block situated in Hastings Town centre. Likely built after 1918, it was built as the local Royal British Legion HQ. Part of the building was converted into three flats at some point in the early 21st century, and are accessed via Devonshire Road. One of the flats is a maisonette covering the full width of the building including a roof terrace. Another entrance to the building is on Station Road, as has historicall had a commercial use as office space. In 2021-22 the first and second floors of the commercial units were converted into an additional four flats."

3. The Applicant explains that,

> "Works to prevent water ingress to Flat 7 as detailed in attached quote by SDS contractor. Works not yet carried out as awaiting dispensation of S20 process. If dispensation approved, date of works is ASAP.
>
> No consultation yet undertaken.
>
> Flat 7 in the building is suffering water ingress due to defects in the external render. The cost of repairing the render excess the Section 20 Threshold for the building. Proceeding with Section 20 consultation will delay the prevention of water ingress by at least 60 days."

4. The quote from S.D.S. Builders and Decorators has been provided with the applcaiton.

5. The Tribunal made Directions on 19 January 2024 which it sent to the Respondent 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. Objections were received from the three lessees shown as Respondents on the front sheet of this decision the remaining lessees having been removed as Respondents as referred to above. 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. The lessees of Flats 1 and 3 provided detailed reasons for their opposition, the lessee of Flat 6 did not elaborate on the objection.

Reference to the Respondents' case therefore is in respect of that made by Flats 1 and 3.

8. 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 reasons given by the objectors and the Applicant's response were clearly set out and would not benefit from the receipt of oral evidence.

The Law

9. 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.

10. 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

Applicant

11. The Applicant's case is set out in paragraphs 2 and 3 above.

Respondents

12. The Lessees of Flat 1 and 3 state that;

- No communication from Applicant on these proposed 'major works.' The first we heard was in the email from the Tribunal received on January 22nd containing the barest detail and with a requirement to respond by January 26th.
- No details of urgency, how arisen or cost.
- Flat 7 has had damp ingress since converted two years ago.
- Investigations since 2022 originally focussing on Flat 3's terrace but then a chimney stack.
- 2 years' later a further possible source identified as external render which should have been identified as part of the conversion works which may have been the cause of the problem.
- Leaseholders will have no opportunity to get answers to these questions, or to establish the cost and how it will be charged, or have opportunity to seek alternative quotes. Given that Flat 7 has experienced damp ingress since the flat's formation two years ago we fail to see why this has now become such an urgent matter that our rights to consultation over 60 days should be forfeited.

Applicant's reply

13. In response the Applicant says that;

- A copy of the quote is now included detailing the work required
- The reason for the application is that the "Section 20 consultation will delay the prevention of water ingress by at least 60 days", and the reason for the work is that "Flat 7 in the building is suffering water ingress due to defects in the external render".
- The water ingress was reported by tenants and investigated by both chartered surveyor and contractor.

- Water ingress occurred after the conversion took place and did not occur immediately following conversion. It was not identified during the conversion works during which no works to the render were carried out
- The cost of the work will be paid from the existing service charge repairs & maintenance fund and reserve fund as needed, so leaseholders will not be billed additional sums due to this work.
- Prior attempts to prevent the water ingress into Flat 7 did not exceed the Section 20 threshold, so a 60 day consultation was not required. The quoted work is the first work to exceed the threshold, and so we would like to address the water ingress as soon as possible to minimise the impact to the tenants of Flat 7.

Respondents' response

14. In reply the Respondents' say that;
- Damp not identified before conversion works took place and occupied as offices
- Why only identified when the conversion work started and when the internal walls were stripped back to the bare brick walls.
- Why case made identifying Flat 6's roof terrace as the cause.
- Quote from SDS now two months old and 2 years after the damp ingress first identified during which time there were multiple attempts to investigations into the cause.

Decision

15. 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.

16. To summarise, the Daejan case requires this Tribunal to focus on whether the landlord's failure to consult has caused the lessees prejudice by such failure. The reasons for failing to go through the consultation process are largely irrelevant to whether dispensation should be granted.

17. In making their case the Applicant has focussed on the need for urgency and the delay that consultation would entail. The Respondents on the other hand have largely focussed on the reasons for the works and how they have arisen. With respect to the parties these issues are not those that the Tribunal finds relevant to its determination.

18. As indicated in the Tribunal's Directions this application does not concern whether the expenditure is either reasonable or recoverable such matters being open to a challenge by the Lessees

under S.27A of the Landlord and Tenant Act 1985. This case is solely in respect of whether the lessees have been prejudiced by the lack of consultation.

19. To determine whether prejudice has arisen it is first necessary to consider the rights that S.20 gives to the lessees. In summary they are;

- The right to receive a Notice of Intention and make observations upon it.
- The landlord to obtain estimates and the lessee to nominate a contractor.
- The estimates, lessees comments and the landlord's reply to be made available.
- Unless the lowest estimate accepted the landlord must give reasons.

20. Given that whilst the lessees may make observations, the landlord is only obliged to consider rather than accept them the loss of such a right has limited value. What has been lost however is the lessees' ability to nominate a contractor and the requirement that the landlord obtains competitive quotations.

21. Where contractors have not been required to submit to a tender process quotations are unlikely to be as competitive as when they have to compete with others. In the absence of any evidence from the Respondent the Tribunal, using its own knowledge and experience would expect the difference between a sole and competitive quotation to be in the region of 10% and it is this amount that the Tribunal finds to be the prejudice suffered by the Respondents due to the lack of consultation.

22. In order to avoid further delays in preventing damp ingress into Flat 7 the Tribunal is prepared to grant dispensation subject to the condition that either the Respondents are compensated by the reduction in the cost to be charged to the service charge by 10% as referred to above or 3 competitive quotations are obtained, the lowest being accepted.

23. **The Tribunal therefore grants dispensation from the consultation requirements imposed by S.20 of the Landlord and Tenant Act 1985 in respect of the repairs to the render subject to the following condition;**

- **10% of the final cost of the works will not be charged to the Lessees OR, three quotations are obtained, the lowest being accepted.**

24. The Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

25. The Tribunal will send copies of this determination to the lessees.

D Banfield FRICS
5 February 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.