



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

**Case Reference** : CHI/00ML/LDC/2024/0113

**Property** : 38 Regency Square, Brighton, East Sussex,  
BN1 2FJ.

**Applicant** : Southern Land Securities Limited.

**Representative** : Together Property Management Limited.

**Respondents** : Regency Property Group Limited (basement  
flat and patio);  
Steven A Teasdale and Sarah J Teasdale  
(ground floor and balcony);  
Kanchan P Trasher and Adrian J Trasher  
(first floor and balcony);  
Brian M J Kinsella and Beata Pyrz (Flat 3 –  
second and third floors) being the four  
leaseholders of the Property

**Type of Application** : To dispense with the requirement to consult  
lessees about major works. Section 20ZA of  
the Landlord and Tenant Act 1985

**Tribunal** : Judge C A Rai

**Date of Decision** : 10 March 2025

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**DECISION**

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**This is a formal order of the Tribunal which must be complied with by the parties.**

**Communications to the Tribunal MUST be made by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk). All communications must clearly state the Case Number and address of the premises.**

## Summary of the Decision

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the same Act in relation to the identified works listed in the estimates from Bourne Construction and Refurbishment dated 14 March 2024 and Craft Building Ltd dated 3 April 2024. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

## Background

2. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 and from the consultation requirements imposed on the landlord by Section 20 of the same Act. The application was received on 1 July 2024.

3. The Property is described in the application as a:

A property constructed circa 1820, consisting of five storeys, the basement, ground floor and three upper storeys; the frontage is brick faced with a yellow masonry paint finish and associated areas of stone block. All front facing windows are the original timber sash type painted with a yellow gloss finish. The pitched roof is not visible from ground level because of the circular parapet and private balcony to the third floor flat.

4. The Applicant explains in the application that;

Following reports of a leak from the roof at the rear of the Property roofers inspected and advised that repairs are required to the roof and the gutters to make it watertight.

And further

Notices under section 20 **have not been sent** to the leaseholders but the managing agent stated that it had written to them advising them of the need for the work to go ahead, with an estimate of the cost of the work. (Estimates dated 14 March 2024 from Bourne Construction and Refurbishment and Craft Building Ltd dated 3 April 2024). The leaseholders were informed that an application would be made to the First-tier Tribunal.

Comparable quotes were arranged (one by the Applicant's representative and another by the leaseholders). As the repairs were considered urgent the lowest quotation was accepted and the work carried out in order to prevent further damage being caused to the flat below. Accordingly, that although the consultation process required by section 20 of the Landlord and Tenant Act 1985 **was not followed** by the Applicant, the leaseholders were, the Applicant says, advised of the need for the work to proceed, advised of the cost of the work and advised that the Applicant would be making an application to the Tribunal to

dispense with the said consultation requirements. No objections, the Applicant says, were received from the leaseholders.

5. The Tribunal gave Directions on 23 October 2024 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any. The leaseholders were invited to complete a proforma reply which was part of those Directions. On it, the leaseholders could indicate if they objected and why and in particular to explain what could have been done differently if the Applicant had followed the formal consultation process or to confirm they did not object.
6. Those Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt.
7. On 13 November 2024 the Applicant's representative sent an email to the Tribunal stating that no objections to the application had been received from the leaseholders.
8. On 20 November 2024 the Tribunal received by email a letter from solicitors acting for one of the leaseholders, Regency Properties Group Limited, (the 20 November Letter). That letter stated that Regency Properties Group Limited had received a copy of the Tribunal's Directions and a copy of the application form. However, it contended that a number of continuation sheets and grounds of application referred to in the application form were missing and had not been received. It concluded that it had received insufficient information to explain the basis of the application for dispensation or of the Applicant's grounds supporting that application. In the circumstances Regency Properties Group Limited had been unable to obtain advice on the terms of the application which meant that there had been a failure of the Applicant to comply with Directions. It was further contended that as the information regarding the cost and extent of the works which form the subject matter of this application had not been provided, it would not be possible for the Tribunal to properly consider the application. Nor was it possible for the leaseholders to put forward grounds to object to the application without further information.
9. The 20 November letter was received by the Tribunal some 14 days after the date by which the objections to the application should have been filed.
10. On receipt of that letter the Tribunal sent a case management application form to the solicitors for its use, should Regency Properties Group wished to make a case management application to the Tribunal. No application was received.

11. The Tribunal gave further directions dated 10 December 2024 stating the application would be determined on the papers without a hearing unless a party objected in writing within 7 days. It also directed the that the Applicant resend to the Respondents:-
  - a. A complete copy of the application form including any continuation sheets.
  - b. A full and detailed description of the works to the Property for which dispensation from the statutory consultation requirements is sought.
  - c. A copy of all quotations or estimates obtained in respect of the works and of all invoices for the cost of the works.
  - d. A copy of its Directions.
12. The Applicant was directed to inform the Tribunal that it had complied with the further direction by a specified time and date and warned that if it failed to comply, its application would be struck out.
13. Respondents were directed to complete the reply form (attached to the further directions) and send it to the Tribunal and were given the same guidance as was set out in its first directions (see paragraph 5 above).
14. The Applicant was directed to reply to any objections and notify the Tribunal if any were received by a specified time on 17 January 2025.
15. A case management application was made on 16 December 2024 by one of the Respondents seeking an extension of time to respond, which was granted, with the dates for compliance (in the further directions) extended by approximately 14 days.
16. On 16 January 2024 the Tribunal received a letter from solicitors representing Regency Properties Limited, confirming, amongst other things, that that Respondent had no objection to the application.
17. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

## **The Law**

18. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease, the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been

undertaken, or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

19. The relevant section of the Act reads as follows:

**S.20 ZA Consultation requirements:**

Where an application is made to [an appropriate 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.

20. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of **Daejan Investment Limited v Benson et al [2013] UKSC 14.**
21. The leading judgment of Lord Neuberger explained that a Tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were a means to an end, not an end in themselves.
22. The factual burden of demonstrating prejudice falls on the **lessee**. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessees.
23. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:  
  
"I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be - i.e. as if the requirements had been complied with."
24. The main, indeed normally, the sole question, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be, or has been, caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
25. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
26. If dispensation is granted, that may be on terms.

27. There have been subsequent Decisions of the higher Courts and Tribunals of assistance in the application of the Decision in **Daejan**, but none are relied upon or therefore require specific mention in this Decision.

### **Consideration**

28. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and if opposed, to provide a statement setting out why they oppose.
29. One leaseholder has returned the reply form confirming agreement with the application. Another has confirmed it does not object. The Applicant has confirmed that it has not received any objections to the application as a consequence of the further directions.
30. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.
31. The reason why dispensation from consultation requirements was sought was because water was leaking through the roof and was damaging the flat below. Repairs were necessary to prevent any further damage.
32. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
33. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
34. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the consultation process.
35. The Tribunal consequently finds that it is reasonable to dispense with all the formal consultation requirements in respect of the major works to the building as described in this Decision. This dispensation is conditional upon the Applicant serving a copy of this Decision on all the Lessees within 14 days of it receiving a copy of this Decision.
36. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works outlined at paragraph 4. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee should wish to challenge the payability or reasonableness of those costs, a separate application to this Tribunal under section 27A of the Act may be made.

37. In reaching my decision I have taken account of the fact that no party has hitherto objected to the application. The Lessees have been afforded the opportunity to raise any objection and have not done so.

**Judge C A Rai**

## **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 to the First-tier Tribunal at the Regional office which has been dealing with the case by email at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
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.