



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

**Case Reference** : CHI/ 21UC/LDC/2020/0007

**Property** : SIA Court, 49 Pevensey Road, Eastbourne,  
East Sussex BN21 3HQ

**Applicant** : Duvacourt Limited

**Representative** :

**Respondent** :

**Representative** :

**Type of Application** : To dispense with the requirement to  
consult lessees about major works

**Tribunal Member** : Mr D Banfield FRICS

**Date of Decision** : 27 February 2020

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**DECISION**

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**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the provision of scaffolding and subsequent repairs to the roof reducing the time for lessees to respond to each stage of consultation to 7 days.**

**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.
2. The Applicant explains that a section of the roof was found to be leaking and appears to require extensive repairs. The Applicant states that it was necessary to install urgently a fully enclosed weather tight scaffold construction covering almost half the roof of the building. In the meantime, the Applicant is intending to carry out the necessary consultation in respect of the repairs but with abridged timescales later confirmed as 7 days for each stage.
3. The Tribunal made Directions on 23 January 2020 indicating that the application would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. Attached to the directions was a form for the Respondents to indicate whether they agreed with or objected to the application.
4. The Applicants were required to send a copy of the application and the directions to each lessee by 31 January 2020 and confirm to the Tribunal that this had been done..
5. It was further indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
6. Replies in respect of 11 flats were received all agreeing to the application. In accordance with the above they, together with those lessees who did not respond have been removed as Respondents.
7. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

## The Law

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

20ZA Consultation requirements:

(1) 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 (1) 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. A Notice of Intention was served on Lessees on 12 December 2019. The Notice gave full details of the work proposed including photographs of the damaged areas. Quotations from two scaffolders were appended and it was also said that an application for dispensation under Section 20ZA was to be sought.
11. On 22 January 2020 the Applicant sent a further communication to the Lessees indicating that following closer inspection enabled by the scaffolding it was apparent that the whole of the roof appeared to require the slates to be replaced and that estimates had been requested from a number of roofing contractors.
12. Lessees were invited to submit their observations and nominations of contractors within 7 days.

13. A number of lessees responded and contractors were nominated. No lessee objected to the proposals.

### **Determination**

14. 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 the requirements.
15. It is clear that such repairs should be carried out as quickly as possible and that it was unreasonable to incur the delay by carrying out a full S.20 consultation.
16. The lessees have had the opportunity to nominate contractors and competitive quotations are awaited.
17. No Lessee has objected to the application and no evidence of prejudice as considered in the Daejan case referred to above has been identified.
18. The Applicant wishes to reduce the time period for lessees' responses to any further notices to 7 days which, in view of the lack of any objections appears reasonable.
- 19. In view of the above the Tribunal grants dispensation from the time limits imposed by the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the provision of scaffolding and subsequent repairs to the roof reducing the time for lessees to respond to each stage of consultation to 7 days.**
- 20. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
27 February 2020

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. 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.
2. 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.

3. 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 appeal is seeking.