



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

Case Reference	: CHI/00ML/LDC/2021/0009
Property	: 35 Adelaide Crescent Hove BN3 2JJ
Applicant	: 35 Adelaide Crescent Limited
Representative	: Jonathan Rolls Property & Estate Management
Respondent	:
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	: Made on the papers without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11 on 19 April 2021

DECISION

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 Dry Rot was discovered in the common ways of 35 Adelaide Crescent in 2020, and Section 20 notices were correctly issued based on a scope of works which was professionally identified by an independent qualified surveyor and works carried out under those notices in order to eradicate the dry rot and to reinstate the affected properties within 35 Adelaide Crescent. Subsequently, further dry rot has been discovered in the building, the eradication of which, had Landlord been aware of it when issuing Section 20 notices previously, would have also been the subject of those notices. In effect the new works now required are closely related and represent a widening of the scope of works for which Section 20 notices were previously issued.
3. Dispensation is sought to enable works to proceed more swiftly than would be the case if full consultation was awaited. Such a delay is liable to enable the dry rot to spread further, and to cause further damage to Respondents properties, and liabilities.
4. The Tribunal made Directions on 2 February 2021 subsequently amended on 8 March indicating that it was satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
5. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
6. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
7. Replies were received by 5 lessees all of whom agreed with the application and in accordance with the above paragraph been removed as Respondents.
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 application remained unchallenged.

9. 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

10. 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.

11. 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
 - i. 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.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. 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).
 - vi. 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.
 - vii. 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.

- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 12. The circumstances of this application are described in paragraphs 2 and 3 above in addition to which the Tribunal has been provided with copies of correspondence between Jonathan Rolls and Peter Overill of Deacon Building Services Ltd confirming the position.

Determination

- 13. 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.
- 14. No objections have been received and therefore no prejudice as referred to in the Daejan case above has been identified.
- 15. The work was clearly urgent and in these circumstances I am prepared to grant the dispensation requested.
- 16. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to eradicate dry rot at the property.**
- 17. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
19 April 2021

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.