



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

**Case Reference** : CHI/24UP/LDC/2022/0027

**Property** : Stratford Court, Northlands Drive,  
Winchester, Hampshire, SO23 7AP

**Applicant** : Stratford Court RTM Company Ltd

**Representative** : Hammond Bale LLP

**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** : 11 April 2022

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**DECISION**

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**The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to carry out roof repairs.**

**In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

**The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

## 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 10 March 2022.
2. The Applicant describes the building as a purpose-built block of flats, consisting of 15 individual flats served by common parts.
3. The Applicant explains that *“the application relates to works required as a result of the devastation caused by storm Eunice. The damage is significant, and the remedial works are necessary in order to safeguard the safety of the property and individual flats comprised within”*.
4. *“Specifically, there is a significant amount of water ingress into at least one flat and the communal areas caused by elements of the property’s roof being ripped away by storm Eunice. As such parts of the property have been left completely exposed to the elements which is causing a significant amount of water and other damage. It would not be prudent to wait until the section 20 consultation procedure has been instigated and concluded as this would take months, all the while parts of the property would be left exposed to the elements.”*
5. The Applicant goes on to explain that the works required are a matter of urgency and have therefore, commenced to minimise the chance of significant and long-lasting damage to the property.
6. The Applicant confirms the following works have been undertaken in the week commencing 28 February 2022.
  - Supplying and securing correct scaffolding and access to the front and side elevations of the property.
  - Remove all existing roofing material/coverings from the complete roof space and place into skip.
  - Remove all damaged timber, decking boards and place into skip.
  - Remove numerous hip tiles from both hip sections and all mortar debris.
  - Install and secure new 18mm Osb decking boards back into correct position.
  - Secure new Harris rail to both sides and rear elevations.
  - Install a generous coat of BMI Icopal QD high performance bituminous primer to the complete roof space and upstands.
  - Install and secure new 50x25mm timber batten to complete roofline.
  - Torch on layer of Soprema SBS 300 base underlay to the complete roof space.

- Install and torch on new Soprema SBS 400 cap sheet mineral drip detail to the complete roofline.
  - Torch on new Soprema SBS 400 cap sheet to the complete roof space and make completely watertight.
  - Re-bed existing hip tiles back into position on new 4:1:1 mortar.
  - Remove all site waste and leave as before works commenced.
7. The Tribunal made Directions on 14 March 2022 indicating that it considered that the application was suitable to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
  8. The Tribunal required the Applicant to send its Directions to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.
  9. Four lessees responded all agreeing with the application. In accordance with the above the lessees are therefore removed as Respondents.
  10. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
  11. 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.
  12. 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**

13. 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.
14. 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**

15. The Applicant's case is set out in paragraphs 3 to 6 above and in the hearing bundle provided in accordance with directions.

## **Determination**

16. 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.
17. In this case I am satisfied that the works were urgent and as no objections have been received the type of prejudice referred to in the Daejan case has not been identified.
18. In view of the above I am not satisfied that the failure to consult the lessees prior to works being carried out has resulted in prejudice to the lessees being occasioned and as such I am prepared to grant the dispensation sought.
19. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to carry out roof repairs.**
20. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
21. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS  
11 April 2022

#### **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](mailto: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.