



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

Case Reference	: CHI/00HN/LDC/2022/0021
Property	: Carlton Court, 428 Christchurch Road, Bournemouth BH1 4AY
Applicant	: Carlton Court (Bournemouth) Management Company Limited
Representative	: Initiative Property Management
Respondents	: Lisa Asmus-Bentley (Flat 10) Neil Chapman (Flat 11)
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	: 27 April 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to carry out Internal Tanking and Redecoration works as described in Greenward Associates' Tender Report of 2 March 2022.

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 made on 28 February 2022.
2. The Applicant explains that *“Flat 37 has been suffering damp for a number of years. We have instructed surveyors to carry out inspections and a schedule of works. The works included, re-rendering the outside and sealing all windows and window cills. Cavity clearances, installation of air core ventilator, repair to leaking overflow pipe from the flat above, repair to guttering and hoppers, repairs to roof system edging. The flat still has damp and suffers water build up, perhaps due to its basement location. We have carried out a tender report and it is likely the costs will exceed the S20 threshold, thus, not to delay we wish to apply for dispensation to be able to carry out the works asap. The block has insufficient funds so a levy will need to be raised. The leaseholder has tried to sell her flat on a number of occasions with this being the stumbling block each time.”*
3. The Applicant further states that, *“Accredited surveyors have reported in full, produced a schedule of works and tendered for the works. We have carried out all of the specified works accept (sic) the Tanking. We instructed the surveyor to carry out a schedule for these works and are now at the stage of instructing the works. The reserve funds will not be able to cover the cost of works.*
4. The Applicant is seeking dispensation because, *“The works are urgent because they will solve poor living conditions/ damp in Flat 37. They will give the buyer assurance and allow a tenant to move into the flat. Given the time taken to carry out the repairs thus far and amount of transactions fallen through due to the damp. The works are deemed urgent to get the repair for the leaseholder.”*
5. The Tribunal made Directions on 11 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.
6. 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.
7. Seven lessees responded all but one agreeing with the application and one agreeing but with some reservations. In accordance with

the above the lessees who fully agreed or failed to respond are therefore removed as Respondents.

8. No requests for an oral hearing were made within the time allowed and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
9. 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.
10. 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

11. 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.

12. 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

13. The Applicant’s case is set out in paragraphs 2 to 4 above together with copies of Greenward Associates’ report of November 2020, their Schedule of Works of January 2022 and their Tender Report of 2 March 2022.

Respondents

14. Although agreeing in part with the application Mr Chapman is concerned that;
 - The surveyors have not specified the findings
 - The reference to “perhaps due to its basement location” appears to be a best guess rather than the expected clearer perspective.
 - Although not a comment on dispensation he would like to know the shortfall of the sinking fund and what the levy will be.
15. Ms Asmus-Bentley objects to the application and comments that *“There needs to be a ceiling to how much I will need to pay. This should have come out of maintenance.”*

Determination

16. The application and bundle are far from clear as to the set of works for which dispensation is sought. The Greenward Associates’ report of November 2020 lists some relatively minor works as being required. However, their Schedule of Works of January 2022 and the subsequent Tender Report dated 2 March 2022 is described as

“Internal Tanking and Redecoration Works” and makes only minor reference to the works previously identified in the 2020 report.

17. As referred to in paragraph 3 above, the application makes reference to having already carried out other work which I must presume does not form part of this application. My consideration of dispensation therefore is solely in respect of those works referred to in the Schedule Works and Tender Report.
18. 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.
19. The issue I must consider is whether by not being consulted as required by S.20 the Lessees have suffered prejudice. As acknowledged by Mr Chapman, the Tribunal is not determining whether the cost of the works is reasonable or indeed recoverable through the service charge.
20. The works have been the subject of competitive tender overseen by a firm of Chartered Building Surveyors. Mr Chapman refers to some imprecise language in the application which I note is not repeated in the professional report received. There has been no suggestion from the lessees as to what changes they would have proposed if they had been consulted and the lower of two tenders appears to have been accepted.
21. 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.
22. **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 Internal Tanking and Redecoration works as described in Greenward Associates’ Tender Report of 2 March 2022.**
23. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
24. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
26 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 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.