



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

Case Reference	:	CHI/29UL/LDC/2022/0011
Property	:	Madeira Court, Clifton Crescent, Folkestone, Kent, CT20 2ER
Applicant	:	Madeira Court (Folkestone) Ltd
Representative	:	
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	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	23 March 2022

DECISION

The Tribunal grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works listed in the S.20 Notice of Intention dated 22 November 2021.

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 6 February 2022.
2. The Applicant confirms that Madeira Court is a purpose-built block of 12 residential flats.
3. The Applicant explains that urgent works are needed (1) to replace wall ties on south and west elevations and (2) to address damp and rain penetration causing significant damage to wall plaster/surfaces and affecting leaseholder comfort. The wall ties need replacing urgently because a small area of the external fabric of the building has collapsed as a result of wall tie failure. The damp and rain penetration needs to be addressed at the same time to minimise costs.
4. The qualifying works outlined in the application are:
 - Enabling works, including erection of scaffolding to the west and south elevations and protection of the existing flat roof to garage block
 - Rebuilding of the masonry pier to Flat 12 which has failed and fallen away
 - Remedial wall tie replacement to the west and south facing walls
 - Investigation, treatment and, where on investigation found to be reasonably needed, repair of the balconies to address moisture ingress to the building
 - Where windows are replaced during the works (at the expense of the leaseholder under the terms of the lease) and where otherwise needed and possible, installation of damp-proofing measures to the fabric of the building at the junction with the windows
 - Any further works of investigation, redecoration or repair as identified subsequently and reasonably needed, where it is in the interests of the leaseholders collectively that these are undertaken at this time, eg. to benefit from the enabling works
 - Tender packages are planned to be sent out on 7 February 2022. To maximise the number of contractor responses, contractors will be given 42 days to respond and so it is anticipated that estimates will be received from contractors in mid March. We are applying for a dispensation to waive the “statement of estimates” consultation so that the contract can then be placed by end March and therefore a suitable building contractor secured to undertake the works as soon as possible in Spring 2022.

5. A Section 20 notice of intention was issued on 22 November 2021. The consultation period ended on 22 December 2021 with no observations received or contractors nominated as at the date of the application.
6. The works were discussed at an AGM on 28 November 2021 and were unanimously approved by the shareholders. Dispensation is sought from consulting leaseholders on the “statement of estimates” for these works.
7. The Tribunal made Directions on 16 February 2022 requiring the Applicant to send them together with a copy of the application to each Respondent included with which was 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.
8. Six lessees responded all agreeing with the application. In accordance with the above the lessees are therefore removed as Respondents.
9. 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.
10. 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.
11. 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

12. 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.
13. 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

14. The Applicant's supporting evidence is referred to in paragraphs 3-6 above.

Determination

15. 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.

16. In this case I am satisfied that the works were urgent, a Notice of Intention was served and as no objections have been received the type of prejudice referred to in the Daejan case has not been identified.
17. 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.
18. **The Tribunal therefore grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works listed in the S.20 Notice of Intention dated 22 November 2021.**
19. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
20. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
23 March 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.