



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

**Case Reference** : CHI/29UK/LDC/2019/0072

**Property** : The Albions, Main Road, Edenbridge, Kent  
TN8 6HR

**Applicant** : Albions Residents Limited

**Representative** : HML Reigate

**Respondent** : -

**Representative** :

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

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Directions** : 4 November 2019

**DETERMINATION**

**The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the works of repair to the roof as referred to in the application.**

**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 urgent repairs were required to the roof of the property to prevent water ingress.
3. The Tribunal originally made Directions on 19 September 2019 requiring the Applicant to serve a copy of the application and the Directions on each of the lessees and to confirm to the Tribunal by 27 September 2019 that this has been done. Included with the Directions was a form for the lessees to complete indicating whether they agreed with or objected to the application. The Directions also noted that lessees who agreed with the application or did not return the form would be removed as Respondents.
4. The Applicant was advised that failure to comply would result in the application being struck out without further notice.
5. The applicant failed to comply and the application was struck out on 2 October 2019.
6. Following representations the application was restored on 11 October 2019 with a requirement that the bundle be sent to the Tribunal by 18 October 2019.
7. The Applicant failed to comply and the application was once again struck out.
8. Following representations the application was reinstated on 29 October 2019.
9. No lessees responded and the lessees have therefore been removed as respondents.
10. There were no requests for an oral hearing and the application is therefore determined on the papers in accordance with Rule 31 of the Tribunal's procedural rules.
11. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application 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:

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.

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
  - 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**

14. The Applicant provided the paginated bundle specified in the Tribunal's Directions. Pages 1 to 5 comprised section 20 Notices in respect of chimney and render repairs.
15. Once work commenced it was discovered that roof repairs were required as referred to at pages 6 to 8 of the bundle.

16. Following approval from 2 Directors a work order was issued on 7 June 2019.

### **Determination**

17. No lessees have objected to the application and no prejudice of the type referred to in the Daejan case referred to above has been identified. In these circumstances I am prepared to grant the dispensation from consultation requested.
- 18. In accordance with the above, the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the works of repair to the roof as referred to in the application.**
- 19. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
4 November 2019

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.

Mr D Banfield FRICS  
4 November 2019