FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/LDC/2021/0032
Property	**:**	The Queens Apartments, 21-36 The Queens Apartments, Robertson Terrace, Hastings, TN34 1JA
Applicant	**:**	Mr Peter Stavri and Mr David Gould
Representative	**:**	Oakfield P.M. Limited
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(s)	**:**	D Banfield FRICS Regional Surveyor
Date of Decision	**:**	21 April 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the reduced works to recover the roof above the commercial units with a liquid membrane which will last for 5-10 years.

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 decision to each of the Lessees contributing to the service charge.

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 *"We were previously granted dispensation for the works required to this roof, in case reference CHL/21UD/LDC/2020/0111/JG, however the proposal has changed, which is confirmed on the attached documents. the works required are to recover the roof above the commercial units with a liquid membrane which will last for 5-10 years." "We were previously granted dispensation under case reference, CHL/21 UD/LDC/2020/0111/JG however, the freeholder has considered that at present in the current climate, it will not be possible to complete the original works due to the cost implication to each of the leaseholders. namely the commercial units, who have already suffered so greatly in this pandemic. the freeholder has explored other options and has been provided with an alternative option which will last for around 5-10 years and will immediately resolve the water ingress issues into the units below. he is also mindful of the cost to the leaseholders of the flats, who will not benefit from this work. when the life of the new covering comes to an end, we can then look at the original plan again, when the residents in the building will be in better financial positions."*

3. The Tribunal made Directions on 31 March 2021 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.

4. 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. The Applicant confirmed by email that the documents had been sent by either email or post to the Lessees.

5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents. No responses were received and the Lessees are therefore removed as Respondents.

6. 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.

7. 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.

8. 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

9. 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.

10. 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

11. As the Lessees did not object to the Application the Applicant has not been required to submit any further evidence, the determination is therefore made on the papers received with the Application.

Determination

12. 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.

13. No objection to the application has been received and no prejudice has therefore been identified as considered in the Daejan case.

14. This is a modification to proposals dispensation for which has already been given. These proposals are less expensive than originally proposed the extent of which has been reduced due to the current economic climate.

15. No objections have been received from the Lessees and therefore no prejudice as referred to in the Daejan case has been identified.

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 reduced works to recover the roof above the commercial units with a liquid membrane which will last for 5-10 years.**

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

18. **The Applicant is to send a copy of this decision to each of the Lessees contributing to the service charge.**

D Banfield FRICS
21 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.