



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

<b>Case Reference</b>	:	CHI/00MS/LDC/2022/0097
<b>Property</b>	:	The Oriental, 29 Queens Terrace, Southampton, Hampshire, SO14 3BS
<b>Applicant</b>	:	UK Property Trust Limited
<b>Representative</b>	:	Beals Estate Agents Ltd
<b>Respondent</b>	:	
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	:	D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	:	17 January 2023

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**DECISION**

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1. The Tribunal grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the roof repairs as referred to in the Notice of Intention dated 26 September 2022.
2. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
3. The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.

## Background

4. 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 November 2022.
5. The property is described as a mid-terrace three storey converted former public house comprising 7 No. Flats. The property is grade II listed.
6. The Applicant explains that *“The case relates to water ingress through the roof of the building and internal trough style gutter, which is causing ongoing damage to 3 flats and communal areas. However, the work has been instructed and will most likely be completed by the time that the case is considered and therefore a fast track case is not considered necessary.”*
7. The works and consultation that has been carried out are described as follows.

*“Serious leaks have occurred from a trough or box style gutter passing through a roof void and which has caused damage to a number of apartments. This is directly above Flat 7, which, following a recent purchase, is undergoing major refurbishment, having been empty for approximately (sic) 2 years. Part of the stripping out works prior to refurbishment have uncovered major decay and deterioration of roof timbers to other areas of the roof structure and which also need repair.*

*In order to prevent further water ingress and subsequent damage, it will be necessary to repair the central part of the roof valley inlet and trough gutter. It is intended that the remainder of the works will form part of the normal Section 20 procedure.*

*A Notice of Intention was served on 26 September (sic) 2022 in order to comply with Section 20 Landlord and Tenant Act 1985. In the meantime, (sic) some temporary (sic) measures were undertaken to prevent water ingress and further damage. However, this has not proved wholly effective and further damage is occurring.*

*A second letter was therefore sent to leaseholders on 24 October 2022 stressing the need to progress with these works prior to the end of the consultation period. A copy of these letters are attached.*

8. The Applicant confirms dispensation is sought as it has not proved possible to prevent water ingress by means of temporary repairs, mainly due to severe weather and rainfall since the service of the Notice of Intention.

9. It is said that costings for this element of the work can be covered by the reserve funds currently held in the service charge client account. A second quote has also been obtained.
10. The Applicant also confirms that it is the intention for the Section 20 procedure to continue for the remainder of the works to the roof and structure.
11. The letter of intention dated 26 September 2022 and letter to leaseholders dated 24 October 2022 has been provided with the application.
12. The Tribunal made Directions on 17 November 2022 setting out a timetable for the disposal which it sent 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.
13. One lessee responded agreeing to the application. The lessees are therefore removed as Respondents.
14. 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.
15. 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.

### **The Law**

16. 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.
17. 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 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**

- 18. The Applicant's case is set out in paragraphs 2 to 8 above and in the Hearing bundle submitted.

**Determination**

- 19. 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.
- 20. Clearly maintaining the integrity of the roof is required as a matter of urgency and should not have been delayed by following the full consultation procedures.

21. A Notice of Intention was served and the Lessees updated by the letter of 24 October 2022. No objections have been received following receipt of the Tribunal's directions indicating that the type of prejudice referred to in the Daejan case above has been suffered. As such I am prepared to grant the dispensation required.
22. The Tribunal therefore grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the roof repairs as referred to in the Notice of Intention dated 26 September 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  
17 January 2023

#### 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.