



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

Case Reference	:	CHI/19UE/LDC/2021/0089
Property	:	Milford Court, Gillingham, Dorset SP8 4SX
Applicant	:	Milford Court Management Company Limited
Representative	:	Greenslade Taylor Hunt
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	:	27 October 2021 without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11.

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of a previous external grain hoist strut at second floor.

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.
2. The Applicant explains that the Property is a converted former brewery and also a listed building, comprising 16 flats and that a previous external grain hoist strut at second floor level is in need of replacement; the Applicant states that the local authority is considering the issue of a dangerous structure notice.
3. 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.**
4. The Tribunal made Directions on 13 October 2021 indicating that it considered that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
5. The application has therefore been determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.
6. The Tribunal required the Applicants to serve the Directions on the parties and confirmation has been received that this had been done. Attached to the Directions was a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.
7. One lessee replied agreeing with the application and in accordance with the above paragraph the lessees have been removed as Respondents.
8. 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 terms of the objection were clear and would not be illuminated by such a hearing.
9. 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

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. The circumstances of the application are contained in the application and set out in paragraph 2 above.
- 12. In the absence of an objection being received the Applicant has not been required to submit any further information.

Determination

- 13. 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.
- 14. The work is clearly necessary and should be carried out with undue delay. No objections from the lessees has been received and no prejudice as referred to in the Daejan case identified.
- 15. In the above circumstances the Tribunal is prepared to grant dispensation.
- 16. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of a previous external grain hoist strut at second floor.**
- 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 determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
27 October 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.