



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

Case Reference	: CHI/21UG/LDC/2021/0028
Property	: Wallington Towers, Sutton Place, Bexhill On Sea, East Sussex, TN40 1 PQ
Applicant	: Wallington Towers RTM Company Ltd
Representative	: Oakfield P.M. Limited
Respondent	: C M Dellbridge (No22)
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	: 30 April 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to replace the corroded steel columns.

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 they *“undertook a project which included repointing, concrete repairs and cavity tray replacements to the south elevation of the building, which started in 2020. During the course of the project, the steel columns have been exposed and have been found to be corroded beyond reasonable repair, and as such the surveyor overseeing the project has consulted with a structural engineer and advises that the steel columns must be replaced.”* *“Primarily the main reason why we seek dispensation is because to carry out full statutory consultation will make it very unlikely that structural work can be undertaken this year. Whilst opening up has already been done, we would like to proceed in replacing the columns at the earliest possible opportunity, whilst we are approaching the warmer weather. As there is already a contractor appointed to work on the building who has assisted with opening up investigations, it may be impracticable (sic) at this stage to involve additional contractors for the sole purpose of handling the structural (sic) work. Until the structural work is completed, the existing contractor is unable to complete the work already instructed for this side of the building.”*
3. The Tribunal made Directions on 16 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.
5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents. Ms Dellbridge of No 22 sent an objection to the Tribunal and therefore remains as a Respondent. The remaining lessees are removed as referred to above.
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. Ms Dellbridge stated *“The surveyor has stated that there is no suggestion that the deterioration of steel columns should create concerns for residents in the short term. Therefore, I feel this does allow time for the full consultation and to obtain other quotations. I fully understand that the works need to be carried out as soon as possible but I do not want to be in a position where I incur unnecessary and avoidable extra cost regarding this substantial project”*
- 12. In reply the Applicant explained *“We have suggested using the same contractor already appointed to carry out work on the building, for two reasons. The first is that we feel, at this stage in the works, that it would be impractical to ask new contractors to attend to quote for works, where another contractor is already working on the building carrying out works to the same area. The second reason is that the time it would take to carry out the full Section 20 Consultation process, may mean that we cannot carry out the works this year, and as such, the building will be exposed for another winter which is not ideal.” “Much of the additional work (replacing the steel beams) will be done by another third party specialist contractor, not Westoaks, however the intention is that Westoaks will pick up on any work associated with this extra work. The difficulty in consulting at this stage is that any additional associated work would ideally need to be tied into the existing specification, for which there is an outstanding contract with Westoaks.”*

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. Ms Dellbridge has the valid concern that competitive quotations are not being obtained which may increase the cost. Balanced against this however is the practical difficulty of delaying work already in progress whilst quotations are sought.
15. Given the likely delays to an ongoing project I am not satisfied that the potential benefit of obtaining quotations outweighs the real risk of delays to the ongoing project.
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 works to replace the corroded steel columns.**
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
30 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 rpcsouthern@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.