



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

<b>Case Reference</b>	:	CHI/19UC/LDC/2022/0018
<b>Property</b>	:	Flats 1-11 Rothesay Point, 15 Wharncliffe Road, Highcliffe, Christchurch BH23 5DB
<b>Applicant</b>	:	Rothesay Point Limited
<b>Representative</b>	:	Highcliffe Property Management
<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>	:	8 April 2022 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.

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**DECISION**

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**The Tribunal grants dispensation from the remaining consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the works to the roof as detailed in the Notice Intent dated 15 February 2022.**

**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 lessee.**

## 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. The application was received on 22 February 2022.
2. In the Section 20 Notice dated 15 February 2022 attached to the application, the Applicant explains that the works needed to be carried out are:
  - *“to install additional scaffold to the remaining areas of Rothesay Point and then strip all roof elevations and dispose of roof coverings and clear from site. To then supply and install a new 18mm timber deck and vapour barrier and subsequent insulation boards to meet building regulations. To then supply and fix Alwitra single ply system roofing system.*
  - *to install new Velux or similar roof light windows where applicable, ensuring they are suitable for shallow pitched roofs.*
  - *to remove and install new Guttering and Downpipes and associated rainwater goods should water testing suggest it is necessary.*
  - *To install a suitable Man Safe or similar safety system to the roof to allow future access and maintenance to be undertaken without the need for scaffold and other access equipment the Man Safe System therefore to allow safe working at height regulations to be met.”*
3. The Applicant is seeking dispensation as the *“roof leaks [are] causing serious damage to flats 10 & 11 below.”* Further information is provided in the section 20 Notice setting out why the Applicant feels it necessary to carry out the works.
4. The Tribunal made directions on 3 March 2022 indicating that the Tribunal was satisfied that the matter was urgent, that it was not practicable for there to be a hearing and it was 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 Tribunal required the Applicant to serve the Directions on the Leaseholders together with a form for them to indicate to the Tribunal whether they agreed with or opposed the application. It was indicated that if they agreed with the application or failed to return the form they would be removed as a Respondent.

6. Nine lessees responded, all agreeing with the application and as such the Lessees have been removed as Respondents in accordance with the above paragraph.
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 was unopposed.
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. In the absence of any objections the Applicant was not required to submit a hearing bundle, the Tribunal relying on the application and accompanying documents.

### **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. The Lessee had been made aware of the proposed works by way of a Notice of Intention served on 15 February 2021 and the Tribunal accepts that these works were urgent and could not wait while the consultation procedures were conducted.
- 14. No objections were received and therefore no prejudice as referred to in the Daejan case has been identified.
- 15. For these reasons I accept that dispensation should be granted.
- 16. **The Tribunal therefore grants dispensation from the remaining consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the works to the roof as detailed in the Notice Intent dated 15 February 2022.**

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 lessee.**

D Banfield FRICS  
8 April 2022

### **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.