



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

<b>Case Reference</b>	: CHI/45UG/LDC/2020/0043
<b>Property</b>	: 8-18 Updown Hill, Bolnore Village, West Sussex, RH16 4GD
<b>Applicant</b>	: Bolnore Village Community Interest Company
<b>Representative</b>	: Abbie Johnson (Pembroke Property Management Property Management-Managing Agent)
<b>Respondent</b>	: Mrs Margot Melville and 5 others.
<b>Representative</b>	: -
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works
<b>Tribunal Member(s)</b>	: Mr W H Gater FRICS MCI Arb
<b>Date of Decision</b>	: 12 October 2020

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**Decision**

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**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the following works;**

- **Erect scaffolding to allow access to the roof. Carry out investigation and repair as required to flat 18 as completed.**

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

## **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. Dispensation is required to;
  - Erect scaffolding to allow access to the roof. Carry out investigation and repair as required to flat 18 as completed.
3. Directions were made on 2 July 2020 and the matter listed for an oral hearing at the Respondent's request. The Coronavirus pandemic caused a suspension of inspections and of Tribunal hearings in person and the Tribunal indicated that the application would be determined on the papers unless a party objected. No objections have been received and the application is therefore determined without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.
4. The directions of 2 July 2020 indicated that parties who did not return the form attached or who agreed with the application would be removed as Respondents.
5. There were six objections to the application and the Tribunal issued further directions on 22 July 2020 granting a request for an extension of time in view of the amount of paperwork received by the Applicants. All other lessees have been removed as Respondents.
6. The hearing bundle has been submitted by email and considered by the Tribunal.
7. 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.**
8. Reference to page numbers in the bundle are shown as [x].

## **The Law**

9. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

- a. 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 (1) 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. Both parties have made extensive submissions to the Tribunal contained in the bundle. The Tribunal has considered these carefully and whilst each point is not repeated here, all submissions have been taken into account in making this determination.

### **Applicant**

- 12. The Applicant describes the circumstances starting in November 2019 when a leaking roof over Flat 18 was discovered. Initial estimates exceeded the required limit for consultation under Section 20 of the Act and Notice of Intention to carry out works based on the initial estimate was served on 11 December 2020.
- 13. On 20 December 2019 the leak was found to have worsened and concern was expressed about the health implications for the tenants who had a baby.
- 14. Due to illness of contractors, the Christmas closures and delay obtaining materials the works did not start until after Christmas.
- 15. At that point the defect was found to be more serious than first thought and the cost of works more than doubled.
- 16. The applicants are seeking dispensation on all the consultation requirements because the situation with the roof had impacted the living conditions of a couple and their baby. They had to move from sleeping in their bedroom to sleeping in the living room. When the leak started coming in through the light fitting in the ceiling it was apparent that we could not wait 3 months to carry out the remedial repairs.
- 17. On this occasion they tried to follow the Section 20 consultation as prescribed under the Landlord and Tenant Act 1985 but had to abandon on reasonable grounds. The Portfolio Manager nevertheless

tried to consult with leaseholders as much as possible with regards the works and costs.

18. In their statement of case the Applicants state that the net result of not consulting would have been no different. The extent quality and costs of the works would not have been adversely affected and arguably the cost of, what were damage limitation works, may have been increased had full consultation been completed.
19. The statement is supported by a witness statement from Mr Hollywood of Pembroke Property Management and GD surveyors report which the Tribunal admits as evidence.
20. Mr Hollywood points out that it was entirely inappropriate to delay the works by consulting further. Water was pouring through a light fitting and there were concerns over health and safety of the occupants. He made a decision on 20 December 2019 that the works were sufficiently urgent to warrant abandoning consultation.
21. He says no evidence was given of prejudice and there was confusion on the part of residents re the jurisdiction of the Tribunal.
22. GD Surveyors report concludes that earlier repairs had been inappropriate and that felt under the tiles had been poorly installed.
23. Recommended works to rectify the problem include refelting reslating and renewal of lead flashings.
24. Detailed responses to Leaseholders comments are included in the bundle. Inter alia they point out that the delay in carrying out works after the Notice of Intent was inevitable in the circumstances.

## **Respondents**

25. Mrs Melville of Flat 8 states that Pembroke were aware of the historic roof problems and questioned why there was a delay in addressing the issue when the problem got worse.
26. She asks why it took the leak to be a health and safety issue before assertive action was taken and why had a surveyor not been previously instructed. Previous repairs had been mismanaged and a lot of money could have been saved had the roof been repaired to a better standard in the first place.
27. Mr O'Brien of Flat 10 said that water had come into his apartment on at last six occasions in the past, between 2012 and 2019.

28. He said that all the repairs carried out from 2012 under various managing agents involved choosing the cheapest option.
29. Mr Youles of Flat 12 had put forward KSD Support Services as proficient to carry out the works. He also questioned the timing of the repair works and believed that with proper planning the repairs could have been carried out in a timely compliant manner.
30. Miss Leitner – Murphy of Flat 14 points out that Pembroke knew the history of leaks as far back as March 2019 and questions why the subsequent problem was described as an emergency. The numerous repairs in the same place were outrageous, poorly executed and wrongly signed off. As the water ingress was due to incorrect construction the leaseholders are not liable.
31. Mr and Mrs Bellamy of Flat 18 have full information concerning the history of water ingress at the apartment.
32. Previous and current managers were aware of the history of leaks into the flat which occurred on six occasions between 2010 and 2019. They would have been aware of the probability of having to apply for Section 20 at some time. They consider that the cheapest repair options were chosen rather than a professionally based cure.
33. There was inadequate supervision/ duty of care taken by managers over contractors. Surveyors recommendations should be implemented, and the sinking fund reinstated.
34. Mr Porter of Flat 16 objected to the application by completing the form but made no further representations.
35. In making its determination the Tribunal considered all submissions including documents and photos.

## **Determination**

36. 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.
37. The consultation procedures required by S.20 are to give lessees notice of proposed works, give them an opportunity of putting forward suggested contractors and generally being consulted.

38. Consultation does not however oblige a landlord to accept the observations made by those consulted. It merely has to take them into consideration. They may be accepted, or they be rejected, it is for the landlord to decide.
39. This does not however give the landlord free rein to spend lessees' money unwisely. Section 19 of the Landlord and Tenant Act 1985 requires costs to have been *reasonably incurred* and to a *reasonable standard* and if they are not, Section 27A gives the Tribunal the power to determine any dispute.
40. Section 20 ZA of the Act is distinct from the previous sections 19 and 20 in that it is only concerned with whether the Tribunal should dispense with the consultation requirements of those sections. It does not look at the reasonableness or payability of costs incurred.
41. The only issue for the Tribunal therefore is whether, with regard to the works referred to in paragraph 3 above, the lack of consultation has prejudiced the Respondent. In other words, if consultation had taken place would the landlord have done something different when arranging for repairs to be carried out?
42. The Respondents views are genuinely held and in many respects they point to past failures to repair effectively. The points they make are however more properly addressed in an application under section 27A to establish reasonableness and payability of repair costs.
43. These issues do not establish that the respondents suffered relevant prejudice through the absence of full consultation.
44. The Applicants did commence consultation by issuing a Notice of Intent and it is apparent that this process would have continued had the leakage not become more serious.
45. The issue of Christmas working, and contractor illness did exacerbate problems, but it has not been established that the outcome would have been markedly different had consultation taken place. The roof had to be repaired urgently.
46. It is clear that the works should be carried out without the further delay that Section 20 consultation inevitably involves. No evidence of relevant prejudice as considered in the Daejan case referred to above has been identified.

**47. 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 following works;**

- **Erect scaffolding to allow access to the roof. Carry out investigation and repair as required to flat 18 as completed.**

**48. The Tribunal orders that the Applicant's costs and all associated costs of the application shall not be charged to the residents or service charge account.**

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

W H Gater FRICS MCI Arb

Regional Surveyor

12 October 2020

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application to [tRPSouthern@justice.gov.uk](mailto:TRPSouthern@justice.gov.uk). The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application reasons for the decision.
2. 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.

3. 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 appeal is seeking.