



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

<b>Case Reference</b>	: CHI/00ML/LDC/2021/0100
<b>Property</b>	: 66 Lansdowne Street, Hove BN3 1FR
<b>Applicant</b>	: Castle Lane Securities Limited
<b>Representative</b>	: Oliver Judge, HML Group
<b>Respondent</b>	: Ms Y Box (Flat 66B) Mr R Knaggs (Flat 3) Mr T P Newman (Flat 2) Mr J Elen (Ground floor)
<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>	: 16 December 2021

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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 water ingress prevention to the tiled roof over the ground floor flat.**

**Dispensation is subject to the following conditions being implemented before the works the subject of this application are commenced;**

- An independent Chartered Surveyor to report on whether remedial works are required to the roof construction and prepare a specification of works.**

- **A copy of the report and specification to be given to each lessee.**
- **Tenders to be sought from 3 contractors at least one of which must be nominated by a lessee.**
- **The lowest tender must be accepted and the work supervised by the independent Chartered Surveyor referred to above.**

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

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## **Background**

1. The Applicant landlord seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed by Section 20 of the Act.
2. The Applicant explains that a defect to the gutter/fascia area over the tiled roof to the ground floor flat is causing water ingress and damage to two of the four flats in the building. Any delay in carrying out the repairs will increase the damage.
3. The Tribunal made Directions on 17 November 2021 indicating that it was satisfied 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).
4. The Tribunal sent its Directions to the parties and invited the respondent Lessees to complete a form indicating whether they agreed or objected to the application.
5. All four leaseholders objected to the application and their reasons for doing so are referred to below.
6. 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.
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.

## **The Law**

8. 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.

9. 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**

### **Applicant**

- 10. The reason for the application is set out in paragraph 2 above.
- 11. Attached to the application was a quotation from DF Construction indicating that the proposed works were;
  - *To Supply scaffolding to rear of property to enable access to guttering over tiled roof of ground floor flat, please not that sextion (sic)of scaffolding will need to go into the basment (sic)ccourtyard (sic)area.*
  - *To inspect condition and detail of guttering along with removing small area of roof tiles to check felt condition.*
  - *To allow minor repairs to guttering and small section of felt.*
  - *To inspect small section of soffit.*
  - *To leave site clean and tidy*
- 12. Although the Tribunal's directions allowed the Applicant to respond to the Respondents' objections none were received by the Tribunal.

### **Respondents**

- 13. The Respondents objections were largely in the same terms and comprise;
  - HML were notified of the issues on 6 February 2020 and 29 September 2021 and have only just taken action.
  - There are defects in the construction of the original build of the extension.
  - The use of DF Construction is objected to.
  - Two other contractors inspected the property on 14 October 2021 and confirmed that the extension roof was at the wrong angle and the Velux windows had been incorrectly installed causing leakage.
  - A professional surveyor should audit the property and quotes which are open, transparent and competitive.

- The proposals are described as “minor works” in the quotation and as such should not be subject to S.20, that being in respect of “major works”

## **Determination**

14. 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.
15. Despite the reference to “minor works” in view of their anticipated cost exceeding £250 per service charge payer the works are subject to the consultation requirements of S.20 Landlord and Tenant Act 1985 and it was necessary for the Applicant to make the application if an amount in excess of that sum was to be recovered.
16. The Respondents have referred to the delay in dealing with this problem first notified in February 2020. This is not however relevant to whether the loss of their right to be consulted will cause prejudice as referred to in the Daejan case above.
17. The Respondents have indicated that two other builders have identified underlying problems with the construction that should be addressed without which the current proposals will be wasted.
18. I also note that the lessees of the flat(s) suffering from the water ingress who one would normally expect to be keen to obtain some relief also object to dispensation being given.
19. Given the above I am satisfied that the Respondents would suffer prejudice if unqualified dispensation was granted.
20. I then turn to whether the application of conditions could ameliorate the prejudice suffered and I consider that it could.
21. Following the full S.20 consultation process takes time and given the ongoing water ingress problem needs to be shortened if at all possible. The lessees are clearly aware that some repair works are required and as such the first stage of the notice procedure may be dispensed with. It is also clear that as there has been some involvement by other contractors some further curtailment of notices may safely be given.
22. In view of the above the I am satisfied that dispensation can be granted subject to certain conditions.
23. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant**

**Act 1985 in respect of water ingress prevention to the tiled roof over the ground floor flat.**

24. **Dispensation is subject to the following conditions being implemented before the works the subject of this application are commenced;**
- **An independent Chartered Surveyor to report on whether remedial works are required to the roof construction and prepare a specification of works.**
  - **A copy of the report and specification to be given to each lessee.**
  - **Tenders to be sought from 3 contractors at least one of which must be nominated by a lessee.**
  - **The lowest tender must be accepted and the work supervised by the independent Chartered Surveyor referred to above.**
25. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
16 December 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](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.