



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

Case Reference	:	CHI/19UC/LDC/2021/0072
Property	:	Belvedere, 6 Wortley Road, Highcliffe, Dorset BH23 5DT
Applicant	:	Belvidere Flats Management Company Limited
Representative	:	Highcliffe Property Management
Respondents	:	-
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 Made in compliance with rule 6A of the
Date of Decision	:	Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 on 13 September 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of two valleys and the identification of the leak to Flat 7 and its subsequent repair.

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 there are active leaks to Flats 5, 6 and 7 which require urgent remedial work. “In reference to Flats 5 & 6, the advice of a professional roofing contractor is to replace a total of 2 roof valleys. In regard to Flat 7, the roofing contractor has indicated that the leak may be due to a leaking balcony above. We would therefore look to instruct a Surveyor to deal with these works from start to finish.”
3. The time taken to follow the consultation requirements in full would result in further damage the flats and building and “we cannot allow these 3 flats to deal with their active leaks until the Section 20 Consultation has concluded as welfare issues may occur.”
“We propose to issue letters explaining the full extent of the works needed and that Belvedere Flats Management Company Limited are applying for dispensation to allow the works to be carried out sooner to stop any further damage to the flats affected. We also propose to still proceed with a full Section 20 Consultation as outlined in the Landlord & Tenant Act 1985 in the meantime until Dispensation has been granted.”
4. The Tribunal made Directions on 6 August 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.
5. The Directions required the Applicant to send them together with a copy of the application to each Respondent. Included with the Directions was form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application. It was indicated that those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.

6. No responses were received from the lessees and they have therefore been removed as Respondents.
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. As no objections from the Lessees was received the Application is determined on the papers already received as part of the application.

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. No objections have been received indicating that the lessees have suffered prejudice of the type identified in the Daejan case referred to above. The remedial work is clearly urgent to prevent further damage to the fabric of the flats concerned and the building and as such I am prepared to grant dispensation.
- 14. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of two valleys and the identification of the leak to Flat 7 and its subsequent repair.**
- 15. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

16. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
13 September 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.