



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

<b>Case Reference</b>	: CHI/21UG/LDC/2020/0099
<b>Property</b>	: Flats 1-8 Egerton Court, 29 Park Road, Bexhill on Sea, East Sussex TN39 3HH
<b>Applicant</b>	: Mrs F Carter & Mr M B Carter Investments Limited
<b>Representative</b>	: Proxim Property Management
<b>Respondents</b>	: Mr P M Searle (Flat 3)
<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(s)</b>	: D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	: 4 February 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 the additional works carried out during major works and identified in the schedule prepared by Phillip Hall Associates.**

**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 Act.
2. The Applicant explains that, while carrying out major works, additional works were found to be required. These were carried out while the scaffolding was in place.
3. The Tribunal made Directions on 22 December 2021 indicating that the application was to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing by 4 January 2021.
4. The Tribunal sent its Directions to the Lessees 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.
6. One lessee objected to the application all others therefore being removed as Respondents in accordance with paragraph 5 above.
7. No requests for an oral hearing have been received and on receipt of the hearing bundle the issues were examined to determine whether the application could be satisfactorily determined on the papers. The Tribunal is so satisfied and the application is therefore determined in accordance with Rule 31.
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. A bundle was provided as directed which contained the Applicant's statement of reasons and supporting documentation.
12. It was explained that consultation had been undertaken by the previous managing agents but that on taking over the management of

the property it was discovered that the proposed works did not include all of the repairs that were necessary. Following a meeting with the lessees on 11 June 2019 it was agreed to restart the tendering process to include works to the whole of the exterior.

13. The works were re-tendered and a Statement of Estimates issued to lessees on 22 April 2020. Work commenced during the course of which additional repairs were discovered to be necessary. Consideration was given as to whether these works should be delayed but, due to the cost of re-erecting the scaffolding it was decided that it would be a false economy not to proceed.
14. The applicant states *“We accept that the charges for the additional works has upset the flat owners and that the works as a whole have placed a huge financial burden on them all. We believe, however, that we have acted in the best interest of the property in ensuring that it is properly maintained. Our belief is that if the additional works had not been instructed, there would be significantly higher costs incurred in 12-24 months-time, so by utilising the scaffold in place these costs have been reduced.”*
15. An objection to the Application was received from the lessee of Flat 3 indicating that if he had been aware of the intention to incur additional costs he would have questioned their necessity and whether parts could be delayed. He considered that an overspend of £7,300 on a contract price of £38,650 was a significant deviation and brought into question the adequacy of the original specification.
16. In a response dated 15 January 2021 the Applicant gave explanations to the Respondent’s questions indicating that the works had been specified following an inspection by the surveyor in August 2019 and that a written breakdown of the additional works was received on 6 October 2020. It was reiterated that the works were all needed.

## **Determination**

17. 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.
18. With any works to older properties there is always the possibility that works not anticipated will become apparent during the course of the contract. I accept that to delay the work whilst further consultation took place would incur the lessees in additional costs albeit at a later date.
19. I have carefully considered the objection raised by one lessee but am not satisfied that it demonstrates the relevant prejudice referred to in the Daejan case referred to above.

20. The Tribunal's decision is not in respect of the costs of the works which may be challenged by any lessee under S.27A of the Landlord and Tenant Act 1985.
21. 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 additional works carried out during major works and identified in the schedule prepared by Phillip Hall Associates.**
22. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
4 February 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 to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
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