



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

**Case Reference** : CHI/21UG/LDC/2021/0006

**Property** : 70 Sea Road, Bexhill-on-Sea. East Sussex  
TN20 1JL

**Applicant** : Southern Land Securities Limited

**Representative** : Together Property Management (email:  
maintenance@togetherproperty.co.uk)

**Respondent** :

**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

**Date of Decision** : 30 March 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 works to replace a third steel beam.**

**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 of the Lessees contributing to the service charge.**

## **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 they previously made application for dispensation in respect of installation of two steel beams. Pursuant to case reference CHI/21UG/LDC/2020/0068 Judge Banfield by determination dated 27<sup>th</sup> October 2020 granted dispensation.
3. The Applicant explains that whilst the works were being undertaken it was determined that a third steel beam was required to be replaced. The beam was replaced as part of the original works and the Applicant now seeks dispensation for the replacement of this third steel beam.
4. The Application attached no evidence beyond the statement that such works have been undertaken.
5. The Tribunal made Directions on 12 February 2021 indicating that the Tribunal considered that the application was suitable to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
6. The Tribunal required the Applicant to send to the Respondents its Directions 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.
7. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
8. No responses were received and in accordance with the preceding paragraph the lessees have been removed as Respondents.
9. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
10. 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**

11. 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.

12. 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**

13. In their bundle of evidence the Applicant confirms that;  
*“During the replacement of two steel beams (FTT dispensation granted 30 October 2020 case reference CHI/21UG/LDC/2020/0068) it was brought to our attention by Nick Barber of Angell Thompson on the 3rd December 2020 that there was a third beam that required replacement.  
We instructed Angell Thompson to proceed with the replacement third beam as it posed a structural issue to the building whilst we awaited costs from the contractors for the works.  
Costs were provided to us on the 5th January 2021 following the Christmas break and an email was written to the tribunal on the 6th January 2021 to ask whether an additional application was necessary to which the Tribunal responded on the 8th January 2021 to confirm that a new application would be necessary and as such the application made on the 15th January 2021 after receiving BACS details to pay the fee.  
All Leaseholders were written too on the 8th January 2021 to make them aware that a third beam was being replaced and the subsequent cost for the replacement and as such due to the cost and nature of the work we would be applying to the Tribunal for dispensation.  
All beams were confirmed to be fitted on the 4th February 2021. We can confirm we have received no objections to this application from the Leaseholders nor have we received any Form from Respondents.”*
14. Supporting correspondence is provided.

## **Determination**

15. 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.
16. Clearly the work was required and it would have been unreasonable to incur the delay caused by following the consultation requirements of S.20 Landlord and Tenant Act 1985. No objections

have been received from the lessees and in these circumstances, I am prepared to grant the dispensation requested.

17. 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 works to replace a third steel beam.**
18. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
19. **The Applicant is to send a copy of this decision to each of the Lessees contributing to the service charge.**

D Banfield FRICS  
30 March 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.