



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

<b>Case Reference</b>	:	CHI/00MS/LDC/2022/0010
<b>Property</b>	:	44 Phillimore Road, Southampton, Hampshire, SO16 2NR
<b>Applicant</b>	:	Southern Land Securities Limited
<b>Representative</b>	:	Together Property Management Ltd
<b>Respondent</b>	:	
<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</b>	:	D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	:	15 March 2022

---

**DECISION**

---

**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to reline the collapsed drain at the front of the building.**

**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 over the weekend of 30 and 31 October 2021 raw sewage was reported to be backing into one of the flats and going into their sink and bath. Contractors attended and cleared the drain, but it was still holding water. It was investigated showing that the line had collapsed and works took place to reline the collapsed drain to the front of the property.
3. The Applicant confirmed that due to the urgent nature of the works no Notices under Section 20 had been served and the works had been completed to minimise the damage to the flats.
4. The leaseholders were advised of the works on 1 November 2021 and again on 31 January 2022 when the insurers repudiated their claim.
5. Retrospective Dispensation of the consultation requirements are sought as there was not enough time to serve the relevant Notices due to the urgency of the matter at the time when raw sewage was escaping into a property.
6. The Tribunal made Directions on 8 February 2022 indicating that it 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.
7. The Tribunal sent copies of the application and its Directions to each Respondent included with which was a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.
8. No responses were received and in accordance with the above the lessees are therefore 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. 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.

11. 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**

12. 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.

13. 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**

- 14. The Applicant has provided a determination bundle confirming the description of events referred to in paragraphs 2 to 5 above.

### **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. In this case I am satisfied that the works were urgent and as no objections have been received the type of prejudice referred to in the Daejan case has not been identified.
- 17. In view of the above I am not satisfied that the failure to consult the lessees prior to works being carried out has resulted in prejudice to the lessees being occasioned and as such I am prepared to grant the dispensation sought.
- 18. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to reline the collapsed drain at the front of the building.**
- 19. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
- 20. **The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS  
15 March 2022

## **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.