FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/24UH/LDC/2022/0045
Property	**:**	Ruby Court and Diamond Court, Coronation Road, Waterlooville, Hampshire, PO7 7FE
Applicant	**:**	Grange Management (Southern) Ltd
Representative	**:**	
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	**:**	D Banfield FRICS Regional Surveyor
Date of Decision	**:**	4 July 2022 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.

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works of "*Replacement of Ridge and Hip Tiles to 8 ridges/hips to each of the two buildings*"

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. The application was made on 10 May 2022.

2. The Applicant describes the property as 2 x separate blocks as one scheme: Ruby Court is a purpose built block of 8 flats, 1 – 8 and Diamond Court is a purpose built block of 9 flats, 1 to 9.

3. The Applicant explains that "*This is roof repairs to ALL the ridges and hips, most of which were damaged in Storm Eunice. An insurance claim has been successfully accepted for the damage from the storm. However, upon beginning the work it is apparent the remainder of ridges and hips are in very poor condition and need replacement. Although the property is fortunate not to have experienced any leaks (none reported) the work is urgent as one more strong wind could bring more ridge tiles down so a safety (sic) issue and of course a high risk of water ingress if not repaired quickly.*"

4. *"Major Works: Replacement of Ridge and Hip Tiles to 8 ridges/hips to each of the two buildings. Insurance Work started 9th May 2022 and reported by roofer from site that all hips and ridges will require replacement to prevent danger in future winds and to ensure the agreen insurance work would remain intact and safe. Scaffold is erected around all the elevations "T" shape plan of 8 elevations per building. Sacffold is included within the insurance claim Which makes this necessary additional work prudent and very reasonable."*

5. *"As the assumed works were originally accepted as an insurance claim, a S20 was not required. Only on starting the work was it realised that the remainder of the ridges were loose and at risk we were advised - 9th May 2022 (yesterday)……"*

6. The Tribunal made Directions on 26 May 2022 indicating that having considered the application the it is 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.

7. The Tribunal required the Applicant to send its Directions to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.

8. Ten lessees responded all agreeing with the Application and in accordance with the above, the lessees are therefore removed as Respondents.

9. 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.

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;

a) 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.

b) 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.

c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

d) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

e) 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).

f) 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.

g) 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.

h) 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.

i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

13. The Applicant's case is set out in paragraphs 2 to 5 above.

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. The issue I must consider is whether by not being consulted as required by S.20, the Lessees have suffered prejudice. No objections have been received and no evidence of prejudice has been provided.

16. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works of "*Replacement of Ridge and Hip Tiles to 8 ridges/hips to each of the two buildings*"

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

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

D Banfield FRICS
4 July 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 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.