



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

Case Reference	: CHI/24UN/LDC/2022/0056
Property	: Swan Court, East Street, Andover, SP10 1EZ
Applicant	: W J Daniel & Company Limited and Tor Pension Trustees Limited
Representative	: Kempton Carr Croft
Respondent	: Mr & Mrs Stevens Flat 4
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	: 28 September 2022

DECISION

The Tribunal grants dispensation from Stage 1 of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works described in paragraph 3 of this decision and contained in the Notices of Intention dated 23 May and 6 June 2022.

The dispensation granted is subject to the Applicant complying with the remaining stages of the consultation requirements.

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 1985 Act. The application was received on 8 June 2022.
2. The property is described as a Flat within a purpose built block of 8 flats above a parade of shops.
3. The work required is described by the Applicant as;
 - *“Installation of scaffold allowing for all works to be undertaken safely and in accordance with best practice and current health and safety regulations. Installation to include but not limited to temporary waterproofing, all support/access facilities, asbestos refurbishment and demolition report and protection against contamination to Swan Court and neighbouring property.*
 - *All permits/licences obtained from the local authority or other relevant authorities in relation to all works, such as scaffold, demolition, or parking permits.*
 - *All enabling works including but not limited to site set up, contractor welfare facilities, disconnection of services, skips, plant (machinery), and any other requirements deemed necessary in execution of the proposed works.*
 - *Stripping off the existing roof cover and dispose from site allowing an inspection of the existing deck. Work to include any repairs or replacement to decayed timber joists.*

Option a). carry out a full review to ascertain the condition of the existing deck, preparation, renewal of any defective sections with associated fixing in advance of application of the new roofing system.

Option b). allow for removal of the entire roof deck and installing of new OSB sheeting in advance of application of the new roofing system, including all associated fixings.
 - *Temporarily unbolt from coping or if necessary complete removal of the metal external cat ladder, set aside allowing for reinstatement on completion of works. Allow new fixing points for cat ladder in accordance with the roofing systems guidance.*
 - *Rod out all internal rainwater downpipes which serve Swan Court. Allow for adjustment, repair, or replacement of defective pipework. CCTV survey on completion to ensure downpipes are free flowing and watertight.*
 - *Installation of a new insulated roofing system to include rainwater outlets in strict accordance with manufacturer's specification. Work to include removal of existing roof lights and adjustments to surround prior to installation. Reinstatement of roof lights.*

- *Removal of 4 no. TV aerials, trace cables to establish whether still live. If no longer live, disposal of all aerials including associated cabling. If live, safely disconnect and set aside ready for reinstatement and to be left in full working order. Make good any penetrations to brickwork or roof cover.*
 - *Hack off render to 5 no. chimney stacks allowing for reinstatement of new render with PVCu white angle beading to edges. Include drip detail in accordance with roofing manufactures guidance. Install 5 no. chimney cowls with adequate fixings.*
 - *Preparation of all balcony/ exterior stairwell ironmongery. Include any associated repairs to ironmongery in advance of new decorations. Removal of cracked copings and corroded section of rail to the communal balcony. Installation of new coping and rail section to match existing.*
 - *Decoration of all external ironmongery to stairwell and balconies. Preparation and decoration of all new and existing joinery to communal stairwell and balcony at first floor level.*
 - *Preparation and decoration of all external render.”*
4. The Applicant also explains that the Notice of Intentions were served to all the leaseholders on 23 May 2022. The Notice in respect of Flat 4 was returned to sender so was again served on 6 June 2022 to the last known address for the leaseholder of Flat 4 and directly on the flat.
 5. The Applicant confirms it has no further contact information for the leaseholder of Flat 4 and is seeking dispensation of the consultation for that leaseholder on the grounds that they have xcarried out all reasonable steps in order to obtain the leaseholders last known address.
 6. Directions were issued on 15 June 2022.
 7. On 4 August 2022 the Respondent sent an email to the Tribunal stating that the documents had been sent to the wrong address by the Applicant.
 8. On 5 August 2022 Judge Tildesley made revised directions giving the Respondents until 19 August 2022 to respond to the Tribunal with;
 - A statement setting out why they oppose the application
 - Evidence of what they may do/have done differently if the Applicant were or had to comply with the full statutory consultation process
 - Copies of all documents to be relied upon not already included in the Applicant’s bundle

9. No response has been received and the Tribunal therefore proceeds to make its decision on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
10. 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.
11. 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.

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;
 - 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

- 14. Details of the application are set out in paragraph 3 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. The dispute in this case has been whether or not the Respondents were properly consulted by the receipt of a Stage 1 Notice of Intention. The guidance of the *Daejan* case referred to above is that the lessees must demonstrate that they have suffered some “prejudice” by not being consulted. As it is unnecessary for the Tribunal to do so, it makes no findings as to whether the documents were properly served but does determine that due to full details being provided as part of this application and the opportunity for observations to be made, no prejudice has been suffered.
- 17. The Tribunal therefore **grants dispensation from Stage 1 of the consultation requirements of S.20 Landlord and Tenant Act 1985** in respect of the works described in paragraph 3 of this decision and contained in the Notices of Intention dated 23 May and 6 June 2022.
- 18. The dispensation granted is subject to the Applicant complying with the remaining stages of the consultation requirements.
- 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
28 September 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.