



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

<b>Case Reference</b>	:	CHI/43UH/LDC/2020/0049
<b>Property</b>	:	Hawthorne Court, Hawthorne Way, Stanwell, TW19 7NQ
<b>Applicant</b>	:	A2Dominion Group Limited
<b>Representative</b>	:	Christopher Last
<b>Respondent</b>	:	Flat 2 – Mr D & Ms N Hawgood Flat 4 – Mr D Markham Flat 8 – Ms LA Kean
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works
<b>Tribunal Member</b>	:	D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	:	30 September 2020

---

**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works referred to in the Notice Intention dated 18 December 2019.**

**Dispensation is granted subject to none of the costs of this application, being the result of the Applicant's error, are charged to the Lessees by way of service charge or any other means.**

**In granting dispensation in respect of part of the Application 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.
2. The application relates to qualifying works undertaken pursuant to a qualifying long- term agreement previously entered into and that the works amount to internal repair and decoration. The Applicant explains that notices were sent to some of the lessees of flats in the building but that, due to human error, they were not sent to the Lessees of 4 flats 3 of whom are listed as Respondents.
3. The Tribunal made Directions on 28 July 2020 which required the Applicant to send to each Respondent a copy of the application and the Directions indicating that the matter would be determined without a hearing in accordance with Rule31 of the Tribunal's procedural Rules unless an objection was received.
4. There was also a form to be returned to the Tribunal indicating whether the application was agreed with and whether a written statement was to be sent to the applicant.
5. The Directions indicated that those parties not returning the form would be removed as Respondents to the application and would not be sent a copy of the Tribunal's decision.
6. The Lessees referred to as Respondents above returned forms objecting to the application and subsequently provided statements which have been included in the hearing bundle prepared by the Applicant.
7. No requests for an oral hearing were received. The application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.
8. The only issue for the Tribunal is if 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:

20ZA Consultation requirements:

- a. (1) 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
- b. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - c. 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.
  - d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - f. 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).
  - g. 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.
  - h. 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.
  - i. 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.
  - j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Submissions**

11. Mr & Mrs Hawgood object to the application on the grounds that;
- The works are contrary to Section 20
  - The proposed works were not urgent being purely cosmetic and is still going on some 5 months later.
  - Lack of descriptions to costings
  - Inaccurate costings without prior inspections to establish work required.
  - Some repairs not required.
  - If consulted all of the above would have been raised.
  - Beneficial to Applicant not to issue S.20 Notices to enable them to proceed without taking residents being involved.
12. Mr Markham objects to the application on the following grounds;

- The Applicant failed to send S.20 Notices in December 2019
  - Notices received after work commenced.
  - Not emergency works
  - The Applicants can charge what they like.
  - There was a motive in not sending the Notice as they are “vocal with their complaints”
  - Work to balconies excessive
  - Management fee excessive.
13. Miss Keen objects to the application on the following grounds;
- No prior warning that works were to commence contrary to S.20.
  - No opportunity to voice opinions.
  - Works schedule unclear as to what the jobs are.
  - There are estimates where no survey has taken place.
  - Work has been carried out to sheds which are now worse than previously.
14. The Applicant replied to the Respondent’s cases on 20 Augusts 2020;
- The decision in Daejan v Benson provides for dispensation to be granted subject to conditions reflecting the level of prejudice leaseholders will have suffered as a result of failure to consult.
  - The statements referred to in paras 11-13 above were not signed, dated or accompanied by a statement of truth and should therefore be struck out.
  - The Respondents’ statements do not set out a case to disallow dispensation for the following reasons;
  - The Applicant failed to serve S.20 Notices on some Lessees due to human error hence the application to dispense.
  - Mr and Mrs Hawgood were given the opportunity to submit observations as indicated by the email correspondence dated 8 April 2020 between Michael Finnerty and Ashleigh Codd of A2 Dominion.
  - The Applicant has invited the Respondents to meet to discuss their concerns which offer has been refused.
  - The Applicant does not have “free rein” to carry out works at any cost as they properly consulted with the other 14 leaseholders.
  - No financial prejudice has been identified
  - Suggestions of a motive behind the failure to serve notices is without foundation.
  - Although Mr Markham states the management fee is too high no suggestion as to what would be acceptable is made. A meeting to discuss was made but not taken up until 28 July 2020.

## **Determination**

15. The Applicant’s application to disregard the Respondents’ statements is refused. The Tribunal has the power under Rule 8(2)(a) to waive any

Direction which it so does with regard to the content and form of the Respondents' statements.

16. 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 the requirements.
17. The guidance given by the case of Daejan v Benson provides guidance to the Tribunal when considering the issues raised by all parties.
18. In situations where Qualifying Long Term Agreements are in place a Lessees right to nominate a contractor is not available and consultation under S.20 is limited to commenting on the proposed works.
19. As indicated in the Tribunal's Directions the sole issue before it is whether Lessees have been prejudiced by the lack of consultation. No determination is made as to whether the costs are reasonable or recoverable, that being a matter for an application under S.27A Landlord and Tenant Act 1985.
20. The Respondents refer to the failure by the Applicants to serve a S.20 Notice in time. That is accepted and it is for that reason that the application to dispense has been made.
21. Daejan and Benson makes no distinction between emergency and non-urgent works, the only issue being one of prejudice.
22. There is no question of "free rein" being given with regard to costs for the reasons referred to in paragraph 19 above.
23. Consultation, albeit at a late stage has been offered to the Respondents in this application and was carried out in full with the other 14 lessees.
24. For the reasons above I am not satisfied that satisfactory evidence of prejudice as identified in the Daejan v Benson case referred to above has been provided and as such the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works referred to in the Notice Intention dated 18 December 2019.
25. Dispensation is granted subject to none of the costs of this application, being the result of the Applicant's error, are charged to the Lessees by way of service charge or any other means.
26. **In granting dispensation in respect of part of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
30 September 2020

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 RPSouthern@justice.gov.uk. 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.
2. 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.
3. 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 appeal is seeking.