



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

Case Reference : CHI/24UJ/LDC/2022/0061

Property : The Dome, 121 Barton Court Avenue,
Barton on Sea, Hampshire, BH25 7EY

Applicant : Gillian Lawrence

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 : 18 July 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of carrying out repairs to the roof as specified by B.E.Willis Partnership Limited subject to seeking three competitive quotations for the works involved.

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 received on 18 June 2022.
2. The property is described as 1 building professional converted into multiple flats including 1 x 4 bedroom flat, 3 x 2 bedroom flats, 4 x 1 bedroom flat, 1 x studio flat and 1 x 2 bedroom flat currently used as a hairdressers.
3. The applicant explains that *“The Dome building is located 100m from the clifftop at Baron on Sea, and is made up of 10 leaseholders. The dome roof and circular supporting structure has been in need of urgent repair for some time and has been previously discussed by leaseholders as the highest priority for repair. Unfortunately 3 recent major storms have resulted in major movement to the circular tower and dome. The dome was left precariously tilting and a danger to flat owners and the public. The structure supporting the dome is badly rotten leaving the building exposed to the elements . As this is an urgent matter of health and safety temporarily scaffolding and supports have been erected to secure the dome. Professional advice has been sort from a structural engineer who has recommended several urgent measures to support the tower and dome to eliminate collapse of the tower and injury to flat owners and the public. He has also recommended that urgent and swift action must be taken to repair the building, hence this application.*
The urgent work carried out to date to safely secure the dome (scaffolding and supports) has cost £2400. This amount falls below the threshold of £250 per flat, the required sum to action a Section 20 and will be evenly split across all lease holders, with the sum recovered from the existing maintenance budget. However the commencement of urgent remedial work to repair the property will significantly exceed this amount, and time frame of following the section 20 procedure will lead to further damage and further increase costs for all leaseholders. Hence this application.
The support measures recommended by B E Willis (report attached) to prevent the structure from collapse will ensure the dome is temporarily secured in an appropriate and safe manner to protect flat owners and the public. This is a temporary measure while we apply for this dispensation. However, the building is left completely exposed and in need of very urgent work. Areas of the circular structure which support the dome are completely rotten and several large holes now penetrate right through the external walls and into the living area leaving the building exposed and vulnerable to even more damage. There is considerable water ingress, including ingress directly into the property under the dome. We are therefore seeking the swiftest resolution with highest priority.

Due to the urgent nature of the work it is not appropriate in this case to proceed with section 20 notice due to the timescales involved and the inevitable further damage this delay will cause to the building, especially as the seasons change and colder/wetter/windier weather arrives. It is clear from the structural surveyors inspection that repair work must be carried out as a matter of urgency to prevent further damage and deterioration of the property.

We have therefore completed an application for dispensation for the repair works from this point forward of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.

B. E Willis Partnership Limited has been instructed to prepare a schedule of construction works to support and strengthen the existing tower.”

4. The report from B E Willis Partnership described as a “Dangerous Structural Notice” and dated 1 June 2022 is attached to the application along with a copy of a letter sent to the leaseholders on 15 June 2022.
5. The Tribunal made Directions on 30 June 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.
6. 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 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. The Applicant confirmed that the Tribunal’s Directions had been served as required.
7. Two lessees responded, neither objecting to the application and in accordance with the above, the lessees are therefore removed as Respondents.
8. 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.
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;

- 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.
- 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.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- 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).
- 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.
- 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.

- 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.
- 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 4 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. Whilst it appears that the immediate danger of collapse has been averted by the erection of temporary scaffolding any delay in carrying out these roof repairs may well lead to further damage being occasioned. Lessees have been advised of the situation and no objections received. The works for which dispensation is sought have not been specified save that they will be carried out in accordance with a schedule of works prepared by B.E. Willis Partnership Limited.
16. 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.
17. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of carrying out repairs to the roof as specified by B.E.Willis Partnership Limited subject to seeking three competitive quotations for the works involved.**
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 determination to all of the lessees liable to contribute to service charges.**

D Banfield FRICS
18 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.