



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

Case Reference	:	CHI/29UQ/LDC/2022/0023
Property	:	122-128 Broadmead, Tunbridge Wells TN2 5RW
Applicant	:	DEVEA 2 LTD
Representative	:	Emil Dimov
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	:	1 December 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works listed in paragraph 4 of this decision.

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

The Tribunal will send a copy of this determination to each of the lessees.

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 was received on 2 March 2022. The Tribunal requested that sample leases be provided and sent a reminder on 1 April 2022. None were provided. On 12 September 2022 the London office of the Property Tribunal forwarded an email from the Applicant asking for an update as to the progress of the application. On 13 September 2022 the Tribunal again requested that the sample leases be provided and these were sent on 15 September 2022.
3. The Applicant explains that the property consists of a “*Detached promenade of 4 shops with 4 flats above with wooden balconies*”.
4. The Applicant states that the works have already been started/carried out.

Further, “*We are seeking to dispense of s20 consultation only for the structural repairs to the balconies as they are for an immediate repair due to previous freeholders not carrying any maintenance on them for at least 20 years. The timber vertical and horizontal structural members are rotten away. We had a building surveyor on site and he stated that the structural timber to be rectified/replaced immediately.[sic]*”

The works are listed in more detail as:

- “*Replace timber cladding on balconies and around the building including treatment to preserve the timber and painting.*
 - *Waterproof balconies and stairs.*
 - *Repair metal balustrades and replace handrails.*
 - *Replace rotten structural elements of balconies immediately.*
 - *repointing and making good to building fabric.*
 - *Tree works*”
5. The Tribunal made Directions on 23 September 2022 setting out a timetable for the disposal and requiring the Applicant to send them 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. On 15 November 2022

the Applicant confirmed that no responses had been received from the lessees.

6. As no lessees responded they are therefore removed as Respondents.
7. 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.
8. 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

9. 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.

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;
 - 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

- 11. The Applicant’s case is set out in paragraphs 2 to 4 above.

Determination

- 12. 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.
- 13. No objections have been received following receipt of the Tribunal’s directions indicating that the type of prejudice referred to in the Daejan case above has been suffered. As such I am prepared to grant the dispensation required.
- 14. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works listed in paragraph 4 of this decision.
- 15. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 16. The Tribunal will send a copy of this determination to each of the lessees.

D Banfield FRICS
1 December 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.