

12378



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

Case Reference : CHI/21UF/LDC/2017/0047

Property : Stratheden Court, 1-9 The Esplanade,
Seaford, East Sussex BN25 1JP

Applicant : Stratheden Residents Seaford Limited

Representative : Housemartins Property Management

Respondent : The Lessees

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 7 September 2017

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of works to the West lift.

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 Applicant explains that the six storey building is served by two lifts, West and East, the former of which is currently being repaired and for which dispensation is sought. The East lift is in use but an overhaul is required for which the consultation procedure will be followed.
3. The residents are elderly and reliant upon a working lift.
4. The Tribunal made Directions on 19 July 2017 requiring the Applicant to send a copy of the application to each lessee together with the Tribunal's Directions and a form for the lessees to indicate whether they opposed the application and required an oral hearing.
5. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

6. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(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.

7. 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 (1) 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

8. In the Applicant's statement of case it was explained that the Applicant is a Residential Company of 75 equal shareholders. In March 2017 one of the two lifts malfunctioned and was rebuilt. The current residents are predominantly in their 80s.
9. Seven lessees returned the tribunal's form all of which supported the application and none of which requested an oral hearing.
10. The hearing bundle also contained correspondence from lessees;
 - The lessee of Flat 5 enquires as to the likely cost
 - The lessee of Flat 6 wished to know why the lift remained out of action for in excess of 3 months
 - The lessee of Flat 10 indicated that he was taking legal opinion
 - The lessee of Flat 26 asked about the contractors and the time span

Decision

11. 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.
12. Clearly the work needs to be done as soon as possible and no objections to the Application have been received by the Tribunal.
13. No prejudice to the leaseholders as referred to in paragraph 7 above has been identified.
- 14. In view of the above the Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of works to the West lift.**
- 15. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
7 September 2017

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 the First-tier Tribunal at the Regional office, which has been dealing with the case. 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 application is seeking.