



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

Case Reference	:	CHI/00LC/LDC/2022/0067
Property	:	Samuels Towers, Longhill Avenue, Chatham Kent ME5 7AT
Applicant	:	Trellick Ltd
Representative	:	Westbury Residential Ltd
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	:	27 September 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to provide compliance of all flat doors, and doors to lobbies in accordance with the requirements of the Kent Fire and Rescue Service.

Dispensation is subject to the Applicant obtaining three quotes from Fire Safe accredited contractors and inviting comments from leaseholders.

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 21 July 2022.
2. The Applicant explains that the property consists of *“two blocks of flats on six floors built in 2004. It has suffered multiple owners and managing agents until acquired by Trellick in 2021.”*
3. Dispensation is sought because *“Following an audit by Kent Fire and Rescue Services and our own Fire Risk Assessment, we have been advised that all flat doors, and doors to lobbies are non-compliant. KFR have verbally indicated that an Enforcement Notice will be issued with a twelve week deadline.”*

Further, *“This work needs to be commissioned as soon as possible as there are both supply chain issues and availability of contractors”*.

The Tribunal notes that *“All leaseholders have been advised that this work is a requirement imposed on us by Kent Fire and Rescue. I will be obtaining three quotes from Fire Safe accredited contractors and inviting comments from leaseholders”*.

4. Directions were issued on 18 August 2022 setting out a timetable for documents to be exchanged in readiness for a determination on the papers.
5. Direction 10 stated *“Immediately on receipt of these directions, the Applicant shall send them including the Statement of Rules and Procedures and Guidance on pdf bundles, together with a copy of the application to each Respondent and shall by 25 August 2022 confirm to the Tribunal that this has been done. IF THE APPLICANT FAILS TO INFORM THE TRIBUNAL BY THE SAID DATE THE APPLICATION WILL BE STRUCK OUT WITHOUT FURTHER NOTICE.”*
6. The Tribunal did not receive notification from the Applicant that Direction 10 had been complied with and on 12 September 2022 struck out the application in accordance with Rule 9 (1) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that the Applicant has not complied with the Directions.
7. The Applicant contacted the Tribunal on 13 September 2022 confirming that he had emailed the confirmation of service to the Tribunal on 19 August 2022 and had also replied to the Tribunal’s email that sent the Notice of Strike Out. Neither email was received by the Tribunal.
8. The Applicant has now re-sent both emails which have been received by the Tribunal, confirming Direction 10 has been complied with.

9. On 15 September 2022 Judge Tildesley reinstated the application and directed that by 22 September 2022 the Applicant must confirm if any objections to the application have been received and send copies to the Tribunal.
10. On 22 September 2022 the Applicant confirmed that no objections had been received and attached copies of Enforcement Notices received.
11. In the absence of objections the Lessees have been removed as Respondents to the application.
12. 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.
13. 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

14. 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.

15. 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

- 16. Details of the application are set out in paragraphs 2 and 3 above.

Determination

- 17. 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.
- 18. 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. It is not a pre-requisite that the works are urgent although this factor may have some relevance as to whether competitive tenders have been obtained. In this case the Applicant intends to obtain three quotations and seek the lessees' comments.
- 19. No objections have been received from the lessees and no prejudice as considered in the *Daejan* cases has been identified.
- 20. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works to provide compliance of all flat doors, and doors to lobbies in accordance with the requirements of the Kent Fire and Rescue Service.

21. Dispensation is subject to the Applicant obtaining three quotes from Fire Safe accredited contractors and inviting comments from leaseholders.
22. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
23. The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.

D Banfield FRICS
27 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.