



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

Case Reference	:	CHI/21UG/LDC/2022/0096
Property	:	1-26 St James Heights, Paradise Walk, Bexhill on Sea, East Sussex TN40 4LG
Applicant	:	St James Heights RTM Company Limited
Representative	:	Cable Rock 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	:	5 December 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the lift.

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 made on 4 November 2022 with the Applicant having indicated that the works are yet to be started.
2. The Applicant explains that the property is a *“purpose built block of flats totlaing [sic] 26 units, comprised of 1 and 2 bed flats and split over 5 floors – of which the lift calls on all 5.”*

The works proposed are *“To replace the main hydraulic lift control system and electrical operation equipment refurbishment.”*

Dispensation is sought because, *“Currently the lift is out of action and turned off, this is at great inconvenience to a lot of leaseholders due to the demographic of the occupiers and the height of the building (5 floors).”*

Further, the *“Client has three quotes for the repairs to the lift and would like to proceed with the cheapest option. This should not put any leaseholder at a disadvantage given these are the same three quotes which would be used in the section 20 notices if that route proceeds. Please note we are running the normal section 20 proccess [sic] alongside this application so leaseholders have been given the opportunity to recommend a contractor as well, which in the case of Only Lifts Limited was a recommendation. At this time there are funds on account to fund these works, our client may, under the terms of the lease seek to collect or all of the monies at a later date. This is TBC.”*

3. The Tribunal made Directions on 9 November 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 14 November 2022 the Applicant confirmed that the documents had been distributed to the Leaseholders.
4. Three leaseholders responded all of whom agreed with the application. The lessees are therefore removed as Respondents.
5. 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.

6. 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

7. 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.

8. 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

- 9. The Applicant's case is set out in paragraph 2 above.

Determination

- 10. 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.
- 11. Clearly returning the lift to working order is urgent and should not be delayed by following the full consultation procedures. Competitive quotations have been received and the leaseholders kept informed of progress.
- 12. 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.
- 13. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the lift.
- 14. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 15. The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.

D Banfield FRICS
5 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.