



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

Case Reference : CHI/21UG/LDC/2022/0116

Property : Flats 1-29 The Landmark, 70 Sackville Road,
Bexhill-on-Sea, East Sussex, TN39 3FA (1)
Flats 30-64 The Landmark, 2 Egerton Road,
Bexhill-on-Sea, East Sussex, TN39 3HH (2)
Flats 65 & 66 The Landmark, 4 Egerton Road,
Bexhill-on-Sea, East Sussex, TN39 3HH (3)

Applicant : Bankside Real Estate Ltd

Representative : Oakfield P.M Ltd

Respondent :

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works
section 20ZA Landlord and Tenant Act 1985

Tribunal Member(s) : Mrs J Coupe FRICS

Date of Decision : 15 February 2023

DECISION

The Application

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 21 December 2022.
2. The property is described as a purpose-built block of sixty-six residential apartments and one commercial unit spanning seven storeys and including two levels of underground parking. The property is situated on Bexhill seafront.
3. The Applicant explained that the communal water tank system serving the property had failed and, although a temporary repair had been effected in order to maintain water supply to the occupiers, replacement of the system was required.
4. The Applicant explained that a specialist contractor, Aqualogic, had been called to the property on the 18 November 2022, whereupon the engineer diagnosed a failed control panel. Aqualogic advised the Applicant that the replacement parts were now obsolete.
5. On 25 November 2022, Aqualogic supplied the Applicant with two quotations, as detailed below. The first quotation involved replacement of the system, whilst the second quotation involved replacement of the control panel with the same, now obsolete, type of control panel. Aqualogic advised the Applicant that no warranty would be provided for option 2, nor would any replacement parts be available.
 - i. **Option 1**
To replace obsolete Wilo booster pump set with new Lowara set with 3 multistage booster pumps and inverters.
£42,257.11 plus VAT
 - ii. **Option 2:** To supply and fit 1 no. Wilo 3 pump 7.5 KW VR switch box.
£4,827.70 plus VAT.

To replace failed 100l pressure accumulator in the plant room.
£1,032.20 plus VAT.
6. The Tribunal was supplied with copies of Aqualogic’s call out report dated 18 November 2022 and quotation dated 25 November 2022.
7. The Applicant sought dispensation on the grounds that it did not have sufficient time to consult with leaseholders because of the urgency of the works and the risks to health and safety if the works were not carried out quickly. Furthermore, that the temporary repairs carried out in order to maintain a water supply to residents, run the risk of flooding should they fail.

8. On 18 January 2023, the Tribunal directed the Applicant to serve the application and directions on the Respondents. On 20 January 2023, the Applicant confirmed to the Tribunal that it had done so.
9. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 1 February 2023 indicating whether they agreed or disagreed with the application. The Tribunal received completed forms, all agreeing to the application, from leaseholders of the apartments listed below:

Apartments: 1; 2; 5; 6; 9; 10; 12; 13; 14; 15; 17; 22; 23; 24; 26; 27; 28; 29; 35; 36; 41; 42; 43; 45; 46;47; 48; 54; 55; 56; 57; 62; 63.

No objections were received.
10. The Tribunal also directed the Applicant to confirm to the Tribunal by 3 February 2023 that no objections had been received from the leaseholders. The Applicant confirmed on 10 February 2023 that it had received no objections.
11. The directions dated 18 January 2023 advised the parties that the Tribunal considered the application suitable for determination on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 14 days. The Tribunal received no objections.
12. 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.
13. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

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

S.20ZA 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.

Discussion

15. There is no objection to this application by the leaseholders and therefore, in accordance with the Tribunal directions dated 18 January 2023, all leaseholders are hereby removed as Respondents. However, despite there

being no objections to the application the Tribunal must be satisfied under s.20ZA that it is reasonable to dispense with the consultation requirements.

16. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“Daejan”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20. In summary, the Supreme Court noted the following:
 - i. 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.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. 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).
 - vi. 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.
 - vii. The Supreme 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.
 - viii. 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.
 - ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

17. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and, if so, to what extent, the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a credible case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
18. The Tribunal now turns to the facts of this application. The Tribunal is satisfied that the provision of running water within a mixed residential and commercial development constitutes a matter of urgency and that the Applicant does not have sufficient time to engage in full consultation with the leaseholders. The Applicant has informed the leaseholders of the proposed works and has sought specialist advice. The Tribunal also takes into account that none of the leaseholders have objected to the application.
19. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

20. **The Tribunal grants an order dispensing with the consultation requirements in respect of the replacement of the communal water tank system.**
21. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and to confirm that that it has done so.
22. In granting dispensation, the Tribunal makes no determination on whether the costs of the works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of the costs arising from the relevant works, then a separate application under Section 27A of the Landlord and Tenant Act 1985 would have to be made.

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.