FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00FY/LDC/2022/0023**
Properties	**:**	**Flats 1 - 6 Chestnut House, 25 Magdala Road, Mapperley, Nottingham, NG3 5DE**
Applicant	**:**	**Chestnut House Magdala Road Management Company Limited**
Representative	**:**	**MPM Ltd (Neil Healey)**
Respondent	**:**	**The leaseholders of Chestnut House**
Representative	**:**	**None**
Type of application	**:**	**An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works**
Tribunal member	**:**	**Judge C Goodall**
Date and place of hearing	**:**	**Paper determination**
Date of decision	**:**	**4 August 2022**

DECISION

Background

1. This is an application for dispensation from the obligation to consult the leaseholders of Flats 1 – 6 Chestnut House about the Applicants intention to upgrade the car park gates at Chestnut House, as it is said the gates cannot be operated safely without the upgrade.

2. The application was described as urgent. The reason is that it is said that in their current state, the gates could be dangerous as they carry a risk of a person being trapped as they operate. They are therefore secured in the open position at present, which creates a security issue for the occupiers of the property.

3. The application is dated 11 July 2022. It has been served on the lessees of the six flats at Chestnut House, together with directions made by Regional Surveyor V Ward on 19 July 2022. In those directions, the lessees were given the opportunity of completing a form indicating whether they consented to the application or opposed it, and whether they wished the Tribunal to hold a hearing. The date for completion of this response form was 28 July 2022. The directions indicated that failure to return the form would be taken as indicating that the lessee did not oppose the application,

4. Three lessees have returned the form. All have consented to the application, and none have requested a hearing. One response has added a comment (as to which see below).

5. The Tribunal has considered the application carefully on the papers and without a hearing. This decision sets out its determination and the reasons for it.

Law

6. The Landlord and Tenant Act 1985 (as amended) ("the Act") imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a "relevant cost" under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).

7. Section 20 imposes another control. It limits the leaseholder's contribution towards a service charge to £250 for works, and to £100 for payments due under a long term service agreement unless "consultation requirements" have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for either works on the building or other premises costing more than £250 or payments for services under a long term agreement (i.e. for a term of more than 12 months) costing more than £100. The two options are: comply with "consultation requirements" or obtain dispensation from them. Either option is available.

8. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)). The processes are set out in Part 2 of Schedule 4 of those regulations.

9. To obtain dispensation, an application has to be made to the Property Chamber of the First-tier Tribunal who may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).

10. The Tribunal's role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works or enter into the long term agreement, but to decide whether it would be reasonable to dispense with the consultation requirements.

11. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

12. The Tribunal may impose conditions on the grant of dispensation. Commonly, a Tribunal might require that the landlord should pay the leaseholders costs of seeking dispensation.

13. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

> "The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered."

Facts

14. The Tribunal has considered the following papers:

    a. The application form to the Tribunal;

    b. A sample lease, being a lease of flat 3 at the property;

    c. A stage 1 notice of intention to conduct major works;

    d. A Customer Service Report from Magtec Electric Gates Ltd ("Magtec") dated 27 June 2022 with 9 photos attached;

    e. A quotation and report from Magtec dated 8 July 2022 quoting the cost of £2,760.00 (including VAT) for necessary work. The remedial work necessary (the "Remedial Works") is described as:

       1 x Leading dege 8k2 safety rib (existing safety rib is an old style non compliant version)
       2 x 8k2 Safety ribs – one covering each hinge pivot area
       4 x Safety ribs – one horizontally to the front & rear of each gate leaf
       Safety rib control cards:

    f. The response forms from the lessees of flats 3, 5, and 6;

15. From the papers, the following facts can be established:

    a. The entrance gates to the property do not comply with current safety requirements under the Workplace (Health, Safety and Welfare) Regulations 1992. This is asserted in the application and supported by the report from Magtec. This conclusion has not been challenged by any lessees;

    b. In the sample lease (fourth schedule paragraph 1), the Applicant has covenanted to keep the gates in good repair and condition;

    c. The lessees have covenanted to pay a service charge to cover the costs incurred by the Applicant of carrying out its obligations under the lease. In the sample lease of flat 3, the proportion of the cost that lessee has to contribute is 2/11ths. Thus it is clear that the lessees do not pay equal contributions, but the Tribunal has no further information concerning the respective contributions required;

    d. Magtec have costed the Remedial Works in the sum of £2,760.00. Even if contributions are unequal, it is apparent that sharing that cost between six lessees will be likely to result in some (and probably all) lessees being required to contribute more than £250 per lessee to the cost;

e. No lessee has objected to the proposition that the Applicant should carry out the Remedial Works. The lessee of flat 5 has commented that two competitive quotes, which should be copied to all lessees, should be obtained prior to commencement of the Remedial Works.

Discussion

16. The task for the Tribunal in this application is to determine whether to give permission for the Applicant to carry out the Remedial Works without having to undertake the process required by Schedule 4 Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003. Were the Tribunal not to grant the application, a more lengthy and costly administrative process would be required before the Applicant could carry out the Remedial Works secure in the knowledge that it was not exposed to the risk of being unable to recover more than £250 per lessee towards the cost of the Remedial Works (though it should be noted that the Applicant will remain exposed to a challenge to the reasonableness of the costs under section 27A of the Act).

17. In principle, the Tribunal grants the Application, as doing so saves time and cost and enables the Remedial Works to be carried out urgently. The likely contributions from the lessees are relatively modest and it is of benefit to them to keep the costs surrounding the Remedial Works as low as possible.

18. The Tribunal must consider the question of whether any lessee is prejudiced by the making of a dispensation order. None of the lessees have claimed so. It seems to the Tribunal to be in the interests of the lessees for the Remedial Works to be carried out as early as possible due to safety and security issues that exist whilst they remain outstanding, and at the lowest cost that can reasonably be obtained. In principle therefor, it appears to be in their interests for the Tribunal to grant the dispensation application.

19. It is necessary to comment on the representation of the lessee of flat 5, suggesting the obtaining of two quotes which should be circulated to all lessees. This process would undoubtedly be required if full consultation were required, rather than being dispensed with (see paragraph 11(5) of Schedule 4 Part 2 of the Act). But the Tribunal is not inclined to require this as a condition of the granting of dispensation. We do make the point however that to recover any service charge expense, the Applicant will need to establish that the expense has been reasonably incurred, and reliance on only one quote may well not be reasonable, quite irrespective of whether it is good management practice. Failure to obtain competitive quotes may possibly therefore fall foul of an application to challenge the expense of the Remedial Works at a later stage through an application under section 27A of the Act.

Decision

20. The Tribunal grants dispensation from the consultation requirements in section 20 of the Act in relation to the Remedial Works, to the Applicant.

Appeal

21. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)