



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

Case Reference : CHI/00HG/LDC/2022/0082

Property : Headland Park House, 94 North Hill,
Plymouth, Devon PL4 8EX

Applicant : Headland Park Developments Limited

Representative : Plymouth Block Management

Respondent : The Leaseholders

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 : Judge D Whitney

Date of Directions : 28 October 2022

DECISION

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. This is a retrospective application that was made on 26 September 2022.
2. The building is described as a “5-storey custom-built block of 20 flats with a commercial unit on the ground floor.”
3. The Applicant explains that:

“The existing fire alarm system has been vandalised by an unruly tenant and needs to be replaced urgently to ensure the building remains safe under fire regulations and meets the obligations of its insurance policy. The building is predominately (sic) occupied by social housing tenants and the Fire Service have indicated they would wish to serve a prohibition notice on the building if the fire alarm system is not repaired immediately..... This work will consist of replacing the existing fire alarm system with a newer functional(sic) model. Please see the attached quotation from B-LEC Group which details the full specification of works to be carried out.”

The Tribunal notes that the quotation does not appear to be attached.

4. Further it states:

“A Zoom Meeting was held with the freeholder and representatives of the leaseholders and housing associations to discuss the issue with the fire alarm and agree a way forward.

It was agreed that the freeholder would pay the costs up-front for the new fire alarm to be installed immediately and those (sic) costs recovered through a Section 20 from the leaseholders.

Because of the urgency and safety concerns the works will be carried out immediately and be completed on Friday 23rd September 2022.”

5. Directions were issued on 5th October 2022. These required any objections to be sent to the Applicant and the Tribunal. The Tribunal has received no objections and so proceeds to determine the application on the documents filed.

DETERMINATION

The Law

6. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”
12. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

13. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
14. If dispensation is granted, that may be on terms.
15. The effect of Daejan has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

Decision

16. No leaseholder has objected.
17. In my judgment it is just and equitable to grant dispensation to the Applicant for the fire alarm works. Such works are plainly urgently required and I note that the Applicant contends the local authority has considered serving a prohibition notice. All of these factors satisfy me the works are urgently required. As a result there is not sufficient time for a consultation to be undertaken.
18. A quotation from B Lec Group UK Limited has been supplied. This lists the works to be undertaken.
19. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however direct that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision and the quotation to all the leaseholders so that they are aware of the same.
20. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.

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.