



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

Case Reference : CHI/24UL/LDC/2022/0049

Property : Fernhill House, Boundary Road,
Farnborough, Hampshire, GU14 6SU

Applicant : Anchor

Representative : Debbie Matusевичius, Home Ownership
Business Partner

Respondent : The Tenants

Representative : -

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

Tribunal Member : W H Gater FRICS
Regional Surveyor

Date of Decision : 11 August 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of emergency refurbishment works which were carried out to the lift at Fernhill House in September 2021.

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 tenants 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 received on 20 May 2022.
2. The Applicant explains that works to a lift were required as soon as possible, as delay would have had an extremely detrimental impact on a number of tenants.
3. The Tribunal made Directions on 1 July 2022 indicating that it considered that the application was suitable to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
4. The Tribunal required the Applicant to send its Directions 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.
5. None of the tenants responded, and in accordance with the above, the tenants are therefore removed as Respondents.
6. 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.
7. 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.
8. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

9. 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.

10. 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;
 - 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 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.

Evidence

11. The Applicant's case is set out in the application received on 20 May 2022 which provides the following evidence: -
12. The property is described as a purpose-built retirement development for those aged 55 and over comprising one block of 27 studio, one bedroom and three bedroom flats.
13. The Applicant explains that the application relates to emergency refurbishment works which were carried out to the lift at Fernhill House in September 2021.
14. The Applicant seeks partial dispensation on the basis that the works to the lift were required as a matter of emergency. Following the breakdown of the lift at Fernhill House towards the end of July 2021 it was identified that the parts required to put this back working order were obsolete and could no longer be obtained meaning that it would be necessary to carry out refurbishment works.
15. They state that the tenants were consulted in accordance with Section 20 consultation requirements, but the consultation periods were reduced to 14 days. The notice of intention was served on 4 August 2021 and provided tenants with 14 days to submit observations and nominate contractors. No observations or nominations were received in respect of the notice. Two quotes were subsequently obtained and the statement of estimates was served on 26 August 2021, which again provided a reduced period of 14 days for observations and comments to be submitted. No observations were submitted in response to the statement of estimates. The Applicant goes on to state that no financial prejudice was suffered by the tenants. as a result of the shortened consultation process.

Determination

16. 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.
17. The Tribunal finds that the works required to the lift were urgent and that it was not possible to operate the full statutory consultation.
18. The Applicant made reasonable efforts to consult the tenants as far as possible in the circumstances.
19. The issue I must consider is whether by the restricted consultation period as required by S.20 has caused the Tenants to suffer prejudice. No objections have been received and no evidence of prejudice has been provided.

20. The Tribunal is satisfied that no such prejudice has been caused to the tenants.
21. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of emergency refurbishment works which were carried out to the lift at Fernhill House in September 2021.**
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 tenants liable to contribute to service charges.

W H Gater FRICS
11 August 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.