



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

**Case reference** : **LON/00BK/LDC/2019/0020**

**Property** : **Hilton House, 21-22 Craven Hill  
Gardens, London W2 3EE**

**Applicant** : **Hilton House Residents Limited**

**Representative** : **Blenheim Estates & Asset Management  
Ltd**

**Respondent** : **Leaseholders at Hilton House**

**Representative** : **Unrepresented**

**Type of application** : **To dispense with the requirement to  
consult with lessees about major works**

**Tribunal member(s)** : **Judge A Sheftel**

**Date and venue of  
Paper Determination** : **11 March 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **11 March 2019**

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**DECISION**

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## **Decision of the tribunal**

- (1) The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the lift as set out in paragraph 10 below.**
- (2) In granting dispensation in respect of the application, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **The application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements required by Section 20 of the 1985 Act.
2. Directions were issued on 7 February 2019. These provided that the Tribunal will determine the application on the basis of written representations, unless any party makes a request for an oral hearing within 14 days of that date.
3. By email to the Tribunal dated 21 February 2019, the Applicant's representative confirmed that the leaseholders had been served with the application form and directions and copies of the application form and directions had been displayed in a prominent position in the common parts of the property. This was said to have been done by 14 February 2019.
4. No requests have been received for an oral hearing and the application is therefore determined on the papers received.
5. The only issue for the Tribunal is if 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**

6. The relevant section of the 1985 Act reads as follows:

“20ZA Consultation requirements

(1) Where an application is made to the appropriate 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.”

7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
- The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - 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.
  - Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - 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).
  - 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.
  - 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.
  - 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.
  - Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Background**

8. The property is a six-storey converted building, comprising 19 flats.
9. The Tribunal is aware that a previous application for dispensation in respect of lift works was granted by the Tribunal on 8 June 2016 in proceedings LON/00BK/LDC/2016/0048.

10. In the present case, the Applicant seeks dispensation in respect of repairs to the lift, which was reported as being out of service on 7 January 2019. According to the application, two separate lift contractors have diagnosed a failure with worn divertors. They will need to be removed from site and overhauled in an off-site workshop. Bearings and shafts need to be replaced. These will then need to be returned to site, refitted and tested.
11. According to page 8 of the application, the applicant seeks dispensation on the basis that *“the lift is currently completely out of service as it is unsafe. Several leaseholders are being caused great inconvenience and pain due to having to use the stairs. We have two residents in particular who are almost housebound (unless they enlist assistance which is seldom possible) and we therefore consider it very imperative that these works are completed as soon as possible”*.
12. Further, leaseholders have been informed as the cost of works is above the consultation limit, the applicant would be applying for dispensation, albeit the Applicant also advised residents and lessees that it would begin the consultation process to run in tandem.
13. According to the Applicant’s statement of case, two quotes have been received, both of which were above the Section 20 limit.
14. The applicant has received no objections to its approach, nor to the application.

### **Decision**

15. On the facts of the present case, the Tribunal notes that:
  - (1) the works are required as a matter of urgency;
  - (2) none of the Respondents has objected to the application; and
  - (3) no evidence has been submitted identifying the type of prejudice referred to in paragraph 6 above.
16. In the circumstances, it is considered that it is reasonable to dispense with the consultation requirements for the specific works. Accordingly, The Tribunal grants dispensation from the consultation requirements of S.20 of the 1985 Act in respect of the works set out at paragraph 10 above.
17. In granting dispensation in respect of the application, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

**Name:** Judge A Sheftel

**Date:** 11 March 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).