



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

Case Reference : CHI/24UF/LDC/2021/0081

Property : Block 25-33 Crown Mews, 15 Clarence Road, Gosport, Hampshire, PO12 1DH/J

Applicant : Crown Mews (Gosport) Management Company Limited

Representative : KJB Residential Property Management Limited

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(s) : Judge J. Dobson

Date of Directions : 29th September 2021

DECISION

Summary of the Decision

- 1. The Applicant is granted 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 in respect of major works, being works to a lift and related. The Tribunal has made no determination on whether the costs of the works are reasonable or payable. The Applicant shall also comply with the Direction at paragraph 28 below. This Decision is made subject to paragraph 29 below.**

The application and the history of the case

2. The Applicant applied by application dated 7th September 2021 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed by Section 20 of the 1985 Act.
3. The Tribunal gave Directions on 13th September 2021, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
4. The Directions further stated that Tribunal would determine the application on the papers received and that having considered the application the Tribunal was satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11.
5. This the Decision made on that basis and following a paper determination.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease 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.

Consideration

15. The Applicant describes the Property as a seven-storey purpose- built block, being one part of a site containing other blocks. There are said to be eight flats in the particular block, referred to as Block E, those flats being numbered 25 to 33 inclusive. At first blush and if there is a flat with each number running from 25 to 33 inclusive, that would make 9 flats but nothing appears to turn on that and so I do not dwell on it.

16. It is explained in the application that following a thunderstorm the lift to the particular block has failed completely and urgent work is required to the Drive Unit. The Applicant says that many of the residents have serious medical conditions such that use of the stairs could create a health and safety risk. There is also concern with regard to attendance by nurses and carers and by emergency services.
17. The Applicant sought dispensation from consultation because of the stated urgency of the works precluding it from following the consultation process. The Lessees are however said to have been notified of a fault and there is a promise to keep them informed and to provide them with copies of quotes.
18. Quotes for the costs of the required parts have been obtained. The application explains that there is an ample reserve fund and that the cost can be met utilising that fund.
18. A sample lease was provided with the application (“the Lease”) and dated in 1990. The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms.
19. The Lease names three parties, including the Applicant, described as the Management Company, and the Lessee. The third is described as the Lessor, Lovell Urban Renewal Limited. Mention is also made of a Superior Lessor, The Council of the Borough of Gosport. Neither of those lessors are referred to in the application and so have not been named by the Tribunal as parties to the application or, as far as I can ascertain, served with the application and related documents.
20. It is not apparent that there is any specific reason why the Superior Lessor needs to have been served in this instance. The Lessor, whether that named in the Lease or the successor in title, ought to have been referred to in the application and served if different from the Management Company and the Lessees. I note that amongst the Lessor’s covenants was one to assign or transfer the Headlease to the Applicant in the circumstances stated, which I expect were fulfilled. I also note that the name of the landlord in the application is that of the Applicant. I perceive that assignment or transfer took place, although I have not been provided with any Land Registry entries to confirm it. Even if it did not and so the Lessor remains separate and with an interest in this application, that may well have produced no change to the position. Nevertheless, I consider that I need to address the fact that such service may perhaps not have occurred- if the assignment or transfer did not happen- and the information in the application is not correct.
21. I additionally note that there is reference in the application to a recognised tenant’s association but that is not named. The existence of that tenant’s association appears, whether for that reason or otherwise, to have been overlooked. It is not named as a Respondent and has not been served. That also requires to be addressed.

22. I have concluded that the most appropriate approach is for a copy of the application and supporting documents plus this Decision to be served on the current Lessor if that is not the Applicant and on the tenants' association. Whilst it is not obvious to me what issue either (if indeed there is more than one) might raise that could alter the outcome of this application, that can only be considered if comments are received. I have determined that such an approach is preferable to delaying this Decision to allow for service and the time for an objection to be attended to where I find it unlikely that any such objection will be received.
23. There are a number of definitions in clause 1, including of the Communal Parts. The other relevant covenants are principally contained in clause 3, clause 4 (in relation to contributions to be made by the Lessees to relevant costs and expenses) and clause 5 (the Lessor's covenants, most notably those in 5 (ii) in relation to repair of the Communal Parts.) The lift is, I find, part of the Communal Parts, being defined as part of such in the Second Schedule. Part Two of the First Schedule sets out the Lessees rights and makes specific reference to the lifts in communal use.
24. There has been no response from any of the Lessees opposing the application. Indeed, all of the nineteen Lessees who have responded have agreed to the application. I observe in passing that to be an unusually high rate of response.
25. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
26. Accordingly, the Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
27. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the lift of the building.
28. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are reasonable or payable. If a Lessee wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1968 would have to be made.
29. If the Management Company is not also the Lessor, the Applicant shall by **4th October 2021** serve this Decision and the earlier papers in this application on the Lessor such that the Lessor may apply to the Tribunal if advised to do so. The Applicant shall further by **4th**

October 2021 serve this Decision and the earlier papers in this application on the tenants' association such that the tenants' association may apply to the Tribunal if advised to do so.

30. Any such application by the Lessor or by the tenants' association shall be made by no later than **8th October 2021**.

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.