



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

Case reference : **CAM/33UE/LDC2019/0024**

Property : **116 Gaywood Road, King's Lynn,
Norfolk PE30 2PX**

Applicant : **Cornerstone Property Management
(on behalf of Mr Joshua Ferdinand)**

Representative : **N/A**

Respondent : **The Leaseholders of flats 1-4**

Representative : **N/A**

Type of application : **For dispensation of the
consultation requirements under
s.20ZA Landlord and Tenant Act
1985**

Tribunal member(s) : **Judge S Evans**

Date of decision : **17th October 2019**

DECISION

The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with all the consultation requirements.

The application

1. The Applicant is the Property Manager of 116 Gaywood Road, King's Lynn, Norfolk PE30 2PX ("the Building") on behalf of the landlord Mr Joshua Ferdinand.
2. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for the prospective dispensation of consultation requirements in respect of qualifying works to be carried out.
3. The Respondents are the leaseholders of the 4 flats in the Building.
4. It is stated in the application that the building is a HMO under s.257 of the Housing Act 2004, in basic terms a conversion of a block of flats which did not then comply with the appropriate building standards.
5. The grounds given in the application set out certain works which the King's Lynn & West Norfolk Council ("the Council") by letter dated 22nd June 2019 to the Applicant require to be undertaken, pursuant to a Health & Housing Safety Rating System inspection of the Building by the Council on 10th June 2019.
6. The works may be summarised as:
 - (1) A Fire Risk Assessment within 30 days;
 - (2) Fire extinguishers in the common parts within 30 days;
 - (3) Installation of a fire alarm in common parts and in each flat, lobby and loft within 60 days;
 - (4) Installation of fire doors within 60 days;
 - (5) Installation of fire resistant construction materials in certain areas within 60 days;
 - (6) Clearing of blocked guttering within 30 days;
 - (7) Fenestration repairs/replacement within 30 days;
 - (8) Top up of loft insulation within 30 days.
7. The grounds further state that the leaseholders and freeholders have received a copy of a Council's report.
8. The application is dated 16th August 2019. Directions were made on 12th September 2019 which provided for the Applicant to serve a copy of the application and directions on the Respondents and for those Respondents to then indicate whether they opposed the application.
9. The Tribunal itself served the application and directions on the Respondents. None of the Respondent leaseholders have replied to the Tribunal raising an objection to the application.

10. The directions also provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was not requested and accordingly the application was considered on the papers today.

11. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

12. The Applicant has filed and the Tribunal has considered a bundle comprising the application, the directions, a specimen lease, the Council's letter of 22nd June 2019 and inspection report, the Applicant's quotes for works, and its FRA dated 10th May 2019.

The issue

13. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act. **The application does not concern the issue of whether any service charge costs will be payable or reasonable.**

The Tribunal's decision

14. The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with the consultation requirements.

Reasons for the Tribunal's decision

15. The Tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "if satisfied that it is reasonable to dispense with the requirements". The Tribunal has also had regard to the leading case of *Daejan Investments Ltd v Benson* [2013] UKSC 14, which confirmed that when considering an application under section 20ZA, the tribunal should focus on the extent, if any, to which the tenants were prejudiced by the failure to comply with the consultation requirements. Whilst this is not a retrospective application as in *Daejan*, the issue of prejudice is very material.

16. The Tribunal takes into consideration this is a s.257 HMO, that the works in the Council's report mainly concern fire safety, that the Council will consider enforcement action if works are not undertaken, and that the Applicant's own FRA found (amongst other things) a breach of compartmentation, a lack of evidence of entrance doors being fire-resistant, and that the fire warning and detection system currently installed (battery smoke alarms) may not be suitable.

17. It is right that items (6) to (8) in paragraph 6 above are less serious than (1) to (5), but they still present hazards of excess cold and risk of dampness, which the Council is prepared to take action upon.

18. In considering the lessees' position, the application has not been opposed by any of the Respondents. They have been sent the Council's report. There is no evidence they have objected to it. Whilst the costs of the works have an estimate in the region of £20,000 according to the quotations, as stated above, this application does not concern the issue of whether any service charge costs will be reasonable or payable.

19. In the circumstances, the Tribunal is satisfied that it is appropriate to grant an order for dispensation.

Application under s.20C

20. There was no application for an order under s.20C of the 1985 Act before the Tribunal.



Name: Tribunal Judge Evans

Date: 17th October 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).