



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

**Case Reference** : **CAM/11MF/LDC/2019/0028**

**Property** : **Thamesfield Retirement Village, Wargrave  
Road, Henley on Thames, Oxfordshire RG9  
2LX**

**Applicants** : **RV Property Holdings**

**Respondents** : **The Long Leaseholders listed in the  
Application**

**Date of Application** : **18<sup>th</sup> September 2019**

**Type of Application** : **To dispense with the consultation  
requirements referred to in Section 20 of the  
Landlord and Tenant Act 1985 pursuant to  
Section 20ZA**

**Tribunal** : **Judge JR Morris**

**Date of Directions** : **25<sup>th</sup> September 2019**

**Date of Decision** : **5<sup>th</sup> November 2019**

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**DECISION**

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**Decision**

1. The Tribunal determines that it is reasonable to dispense with all the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 4 Part 2 of the Service Charges (Consultation requirements) (England) Regulations 2003.

## **Reasons**

### **The Application**

2. An Application for dispensation from the section 20 consultation requirements in respect of replacing an oil tank which served the lift to the Property was made on 18<sup>th</sup> September 2019. Directions were issued on 25<sup>th</sup> September 2019.
3. The Directions stated that the Application would be determined on or after 4<sup>th</sup> November 2019 based on written representations and without an inspection, unless either party made a request for an oral hearing. No request was received.
4. The Directions required the Applicant to prominently display at the Property and serve on each of the Leaseholders a copy of the Application (excluding the names and addresses of Leaseholders) and the Directions by 7<sup>th</sup> October 2019. The Directions required the Leaseholders who opposed the Application to complete and send an attached reply form to the Tribunal and a statement in response to the Application with a copy of the reply form to the Applicant by 18<sup>th</sup> October 2019. No representations were received from the Leaseholders.
5. The Applicant provided a bundle by 29<sup>th</sup> October 2019 as required by the Directions. This included a copy of a Lease for 10 Thamesfield Close dated 30<sup>th</sup> January 2008 between Thamsesfield Limited (1) and Irene Alice Chamberlain (2) for a term of 125 years from 30<sup>th</sup> January 2008 confirming the Respondents are long leaseholders.
6. The Applicant also provided copies of correspondence as follows:
  - 1) A copy of a letter to Leaseholders dated 11<sup>th</sup> September 2019 informing them of the potential need for a procedure under section 20 of the Landlord and Tenant Act 1985 to be followed for certain works. The letter also informed Leaseholders of the leaking oil tank which served the lift, that the lift engineers advised the tank required urgent replacing at a cost of £8,995 plus VAT because there was a risk the tank might break and spill. The letter added that because of the urgency the engineers had been instructed to replace the tank and an application would be made to dispense with the procedure under section 20 of the Landlord and Tenant Act 1985.
  - 2) A copy of a covering letter to leaseholders dated 26<sup>th</sup> September 2019 sent with copies of the Application Forms and Directions.
  - 3) A copy of a letter to the Tribunal dated 30<sup>th</sup> September 2019 confirming its Directions had been complied with.

## **The Law**

7. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
8. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised in Annex 2 of this Decision and Reasons.
9. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

## **The Evidence**

10. The Applicant has submitted written grounds for the Application.
11. The Property comprises 35 independent living apartments on long leases in a retirement village with a nursing home. There is a recognised tenants' association.
12. The Applicant stated that on 8<sup>th</sup> April 2019 a stain was noticed on the ceiling above the elevator which was found to be oil leaking from the tank serving the lift.
13. Sky Elevators, the lift engineers who maintained the lift, inspected and investigated the problem and reported that the tank could not be repaired and would need to be replaced. They added that a new tank would need to be installed urgently to prevent the full contents of the tank being spilled. The amount quoted for doing the work was £8,995 plus VAT (£10,794.00) The Applicant liaised with Ilecs who are the Applicant's lift consultants to discuss whether this was a reasonable price for the work needed. Ilecs recommended that the quote was accepted and the Applicants authorised Sky Elevators to carry out the work as soon as possible to prevent further damage to the building. A deposit was paid in May and the work was completed in July.
14. The Applicant stated that work over £9,000 required the procedure under section 20 of the Landlord and Tenant Act 1985 to be followed. However, this would take at least two months and the work was urgent as there was a danger the tank would fail causing considerable damage. Therefore, the work was put in hand immediately and an application made under section 20ZA of the 1985 Act.

## **Determination**

15. In determining whether or not dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that “*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*”.
16. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:  
*Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]*
17. The Tribunal noted that no objections were raised to the work being carried out without compliance with the section 20 procedure.
18. The Tribunal accepted that the works were urgent. The failure of the tank would cause considerable damage to the building and the oil spillage would be a significant health and safety risk to residents. In addition it would undoubtedly result in the lift being out of operation. In this regard, the Tribunal noted that the building comprises flats for older persons, some of whom might find the lift being out of a commission, even for a relatively short time, a very great inconvenience.
19. The Tribunal determines that it is reasonable to dispense with all the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 4 Part 2 of the Service Charges (Consultation requirements) (England) Regulations 2003.
20. Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act

## **Judge JR Morris**

## **ANNEX 1 - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

## **ANNEX 2 - THE LAW**

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

*A Notice of Intention* to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

*Estimates must be obtained* from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

*A Notice of the Landlord's Proposals must be served on all tenants* to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the "relevant period" and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

*A Notice of Works* must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –
  - (1) 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.
  - (2) In section 20 and this section—  
"qualifying works" means works on a building or any other premises, and  
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
  - (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—  
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
  - (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
  - (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
    - a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
    - b) to obtain estimates for proposed works or agreements,

- c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
- d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
- e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) and (7)... not relevant to this application.