



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

HMCTS code (audio, video, paper) : **P: PAPERREMOTE**

Case reference : **CAM/26UJ/LDC/2021/0038**

Property : **Flats 1-9, Beechcroft Place, 29
Eastbury Ave, Northwood,
Hertfordshire, HA6 3JS**

Applicant : **Beechcroft Place Ltd**

Representative : **HML Group (Managing Agents)**

Respondent : **All leaseholders of dwellings at the
Property (including any of their
subtenants of any such dwelling)
who are liable to contribute to the
cost of the relevant works**

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 : **4 January 2022**

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.

Covid-19 pandemic: description of hearing

This has been a remote decision. The form of remote decision is P: PAPERREMOTE. A face-to-face hearing was not held because this is an application which was deemed suitable to be decided on the papers. The documents before the Tribunal are contained in the Applicant's paginated bundle of 92 pages.

The Application

1. The Applicant is the Landlord and freeholder of the Property.
2. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for what is now retrospective dispensation of consultation requirements in respect of qualifying works carried out.
3. The Respondents are the leaseholders of the 9 flats in the Property and any suboccupiers who are liable to contribute to service charges.
4. It is stated in the application dated 4 October 2021 that the Property is a purpose built block of 9 flats, comprising 2 x 3 bedroom flats and 7 x 3 bedroom flats.
5. The grounds given in the Application set out certain works which the Applicant states are required to be undertaken to electric entrance gates.
6. More particularly, the Application states:

“The electric vehicle entry gates went faulty in August 2021. On inspection by the gate engineer it was determined that the two gate motors have failed and need to be replaced. The gate motors are now obsolete. Quotes are being obtained from 3 gate contractors to install new gate motors. Residents are manually opening and closing the gates and have been doing so for three months now. This is an urgent security issue and the gate motors need replacing urgently.”
7. Directions were made by Judge Wyatt on 5th November 2021. The Applicant has complied with directions. The Respondents have not. Indeed none has sought to oppose the application.
8. On 3 December 2021 the Applicant's managing agents emailed the Tribunal to enclose 2 copies of the hearing bundle per the above directions. They confirmed that no opposition to the Application had been received. They also stated that the 9 leaseholders had been copied into their email, 8 by email and 1 by post.
9. The directions 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.

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

The issue

11. 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

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

Reasons for the Tribunal's decision

13. 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.
14. The evidence produced by the Applicant discloses the following facts:
15. A sample lease has been provided to the Tribunal (for Flat 7) dated 17 May 2004. It is assumed all other 8 leases are written in similar terms. By Schedule 4, Part 2, the lessee covenants to pay a maintenance charge (i.e. a service charge) to the lessor. By Schedule 7, Part 1, the lessor covenants with the lessee to keep in good repair and to renew and improve as and when it may from time to time in its absolute discretion consider necessary certain parts of the Property/Estate, including at paragraph 1.8 the vehicular and pedestrian gates providing access to the Estate.
16. On 20 July 2021, Eagle Automation Systems Limited inspected the electric entrance gates, and provided a quote 3 days later in the sum of £3720 + VAT for replacement motors and labour. They had found that the gate was closing but was not working correctly; that the left hand motors were heavily worn and were leaking oil; and that the left hand drive collar was badly worn.
17. On 9 August 2021 the Applicant prepared what might be called a Stage 1 notice of intention, pursuant to section 20 of the Landlord and Tenant Act 1985, addressed to all the leaseholders. It stated an intention to replace the electric gate motors and foundation boxes and associated works. It said it

was considered necessary work, in order to maintain the block in a good state of repair. Leaseholders were given until 15 September 2021 to make representations.

18. The said notice appears to have been served on or around 11 August 2021, since that is the date of its covering letter.
19. There is no evidence before the Tribunal that any leaseholder made any representations in response to the notice.
20. However, there is evidence that the Applicant then sent a letter to the leaseholders dated 6 September 2021 inviting their agreement to dispense with the requirements for consultation under the Landlord and Tenant Act 1985.
21. Each leaseholder thereafter gave their signature beneath the following words written at the end of the letter:

“I/We the undersigned of Flat..... as Leaseholder, hereby agree and confirm to dispense with the legal section 20 process to replace the electric gate motors and for HML to issue this signed disclaimer of the section 20 process to the First Tier Tribunal.”
22. There is evidence that this process of seeking agreement took some time to complete, with the very last leaseholder signing the above declaration as late as 16 December 2021.
23. It follows that, as of the date of this Application on 4 October 2021, only 8 of the 9 leaseholders had agreed to dispense with the section 20 process, and the Applicant still required dispensation from the Tribunal.
24. On 21 October 2021 the Applicant obtained a second quote, from a company called Peak Security Systems Ltd. This noted that the motors had been discontinued by the manufacturers, with the result that new parts would be required. The quote for all necessary works was in the sum of £2635 plus VAT.
25. On 9 November 2021 the Applicant obtained a third quote, from a company called Fortress Security Systems Ltd. The quote was in the sum of £3795.25 plus VAT.
26. On 11 November 2021 the Applicant wrote to each leaseholder enclosing the Application to the Tribunal, the 3 estimates for the replacement motors, and the Tribunal’s directions.
27. On 1 December 2021 the Applicant wrote to all the leaseholders to indicate that the motors had now been fitted, following approval at a recent annual general meeting; and that Fortress had been the appointed contractor, at the cost quoted by them in November 2021.

28. The above factual matrix shows that the Applicant has made some substantial attempts to keep leaseholders informed, and has provided 3 quotes to them, and has invited representations. It does not appear that any leaseholder engaged in the consultation process.
29. The facts indicate that the lack of working electric gates posed some security risk, such that swift action by the Applicant was required. Moreover, leaseholders were manually opening the gates, which from the Tribunal's expertise can be a cause of further damage.
30. In considering the lessees' position, it is notable that the Application has not been opposed by any of the Respondents. Indeed, they would appear to be consenting to it. Whilst that is not a decisive factor, it weighs heavily in favour of dispensation, since it indicates none of the leaseholders would appear to be prejudiced by the lack of full consultation.
31. In all the circumstances, the Tribunal is satisfied that it is reasonable to grant an order for dispensation.

Name: Tribunal Judge S Evans

Date: 4 January 2022.

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).