FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00MS/LDC/2021/0121
Property	**:**	1 Briton Street, 70 High Street, Southampton, SO14 2NW
Applicant	**:**	Telephone House (Southampton) Management Limited
Representative	**:**	HMSL Property Management Services Limited
Respondent	**:**	Mr K Martin (Flat 22)
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)	**:**	D Banfield FRICS Regional Surveyor
Date of Decision	**:**	22 February 2022 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.

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of works to repair the lift.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Applicant is to send a copy of this decision to each lessee.

Background

1. The Applicant seeks 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.

2. The Applicant explains that the Property is a six- storey building consisting of 32 residential flats. It is said that that 2 of the flats are privately owned under long leases. From the application it appeared that the other 30 are leased by Vivid Housing Association ("Vivid") and that variously tenancies and shared ownership underleases have been granted by Vivid.

3. Judge Dobson made Directions on 4 January 2022 and following the receipt of information that the 16 shared owner lessees were also liable for service charges made Further Directions on 24 January 2022 to enable their responses to be obtained.

4. The application is said to be urgent because the only lift to the Property is inoperative. It is stated that residents have difficulty with mobility and that some use wheelchairs or are recovering from serious illness and require carers to attend and reside on middle or top floors. Regrettably, the lead time for parts is said to be eight weeks and the timescale for the works is a further three weeks. It is not indicated what arrangements are in place for residents with mobility problems to come and go or any particular arrangements in the event of any hazard, although that falls outside of the scope of this application.

5. The Tribunal's Directions indicated that it 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.

6. The Tribunal served the Directions and a copy of the application on each of the named respondents together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application. It was indicated that those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.

7. Seven forms were received from occupational lessees and one from Vivid as head lessee of 30 flats all but one of which agreed to the application and have therefore been removed as Respondents. Mr Martin of Flat 22 objected to the application and therefore remains as a Respondent.

8. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the Respondent's objection has been clearly made.

9. The only issue for the Tribunal is whether 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

10. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:
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.

11. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following

i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

ii. 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.

iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

v. 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).

vi. 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.

vii. 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.

viii. 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.

ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

12. The Applicant's case is as set out in paragraph 4 above.

13. Mr Martin objects to the application on the following grounds;

a. Despite being described as urgent the lift has been broken since October 2021 and regularly before that.
b. If the issue had been addressed earlier there would have been time for the full consultation process to be followed giving leaseholders the opportunity to comment and suggest quotes.
c. He has not seen either of the two estimates referred to in the Applicant's letters.
d. Vivid should be fully involved in the process.

Determination

14. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.

15. In turning to Mr Martin's objections the question the Tribunal must ask itself is whether the Respondents will be prejudiced by not being consulted prior to carrying out the proposed works to repair the lift.

16. The Tribunal accepts that in any multi storey building the lift is an essential facility and, when inoperative, must be brought back into repair as quickly as possible. The Tribunal is also aware that the availability of lift contractors is limited and that it may not always be possible to obtain a number of competitive quotations.

17. The Tribunal accepts that it may have been possible for works to have been addressed at an earlier stage, but that is not a reason for imposing further delays by refusing to grant dispensation.

18. The Tribunal's decision is in respect of dispensation only and the amount of the two quotations is not relevant to this application. Any challenge to the cost can be made through an application under S.27A of the Landlord and Tenant Act 1985.

19. Vivid have been consulted and do not object to the application.

20. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of works to repair the lift.**

21. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

22. **The Applicant is to send a copy of this decision to each lessee.**

D Banfield FRICS
22 February 2022

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.