



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

<b>Case Reference</b>	:	CHI/43UB/LDC/2022/0022
<b>Property</b>	:	Lynde House, Vicarage Fields, Walton On Thames, Surrey KT12 2ER
<b>Applicant</b>	:	PA (Paragon Asra) Housing Limited
<b>Representative</b>	:	Victoria Gooch
<b>Respondent</b>	:	
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal member</b>	:	D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	:	4 April 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 the service of a Notice of Intention required by Schedule 3 of the Service Charges (Consultation etc) (England) Regs 2003.**

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

## Background

1. Although the application received on 3 March 2022 referred to Dispensation in respect of a Qualifying Long Term Agreement (QLTA) and did not involve Qualifying Works this has subsequently been clarified. The Applicant further states that the application is for dispensation from serving a Notice of Estimate whereas on investigation this cannot be correct.
2. From the documents now to hand it is clear that following a Notice of Intention dated 8 April 2019 and a Notice of Proposal dated 26 February 2021 the Applicant entered into a QLTA with Precision Lift Services Limited.
3. Consultation requirements for proposed works where such a QLTA has been entered into are set out in Schedule 3 to the Service Charges (Consultation etc) (England) Regs 2003 and require a Notice of Intention to be served on tenants where qualifying works are proposed.
4. As this is the only Notice required to be served under Schedule 3, I am assuming that it is a Notice of Intention rather than a Notice of Estimates for which dispensation is sought.
5. The Applicant describes the property as a *“purpose build block of flats containing 30 properties over 7 floors. The flats are 2 bedroom properties mixed tenure of general needs and leaseholders with a mix of ages and families.”*
6. The Applicant explains that *“the lift has broken down and in order to get this working the parts needed will take 7-10 days, however there are other elements of the work and upgrades that will take longer to come which will be 4-6 weeks. The QLTA was entered into on 1 July 2021.”* Further *“The consultation carried out was for lift repairs and maintenance only.”*
7. The Applicant states that it is seeking dispensation because *“the building is 7 storeys high and all flats are 2 bedrooms meaning some residents may have small children and buggies to carry up all flights along with shopping, this is a huge inconvenience to our residents and lift is also required for those with mobility issues we also have an amputee within the building and we need to get the lift fixed and working due to the vulnerabilities”*
8. The Tribunal made Directions on 10 March 2022 indicating 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

9. The Tribunal required the Applicant to serve the Directions and a copy of the application on each of the 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. The Applicant confirmed on 15 March 2022 that the Tribunal's Directions had been served.
10. 3 Lessees responded all of whom were in agreement with the application. As indicated above those agreeing and those not replying have been removed as Respondents.
11. 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 application was uncontested.
12. 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**

13. 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.

14. 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**

- 15. In the absence of any objections the Applicant was not required to serve further evidence than that already referred to at paragraphs 5,6 and 7 above.

### **Determination**

- 16. 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.
- 17. The Tribunal accepts the urgency of returning the lift to working order without unnecessary delay. No lessee has submitted an objection, and no prejudice has been identified as referred to in the Daejan case above.

18. For these reasons I accept that dispensation should be granted.
19. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the service of a Notice of Intention required by Schedule 3 of the Service Charges (Consultation etc) (England) Regs 2003.**
20. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
4 April 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](mailto: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.