



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

**Case Reference** : CHI/19UD/LDC/2022/0118/AW

**Property** : Cherret Court, 557 Ringwood Road,  
Ferndown, Dorset BH22 9FF

**Applicant** : McCarthy & Stone Retirement Lifestyles  
Limited

**Representative** : McCarthy & Stone Management Services

**Respondents** : The Leaseholders

**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)** : Judge Tildesley OBE

**Date and Venue of  
Hearing** : Determination on Papers

**Date of Decision** : 27 February 2023

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DECISION

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## **The Application**

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. The application was made on 22 December 2022
2. The property is described as a purpose built block of flats comprising of one and two bedroom apartments, age-restricted community for the over Sixties.
3. The Applicant explained that the motor controlling the main doors to the development had stopped functioning properly. This has resulted in one door permanently shut and the remaining door only intermittently opening/closing. The homeowners, particularly wheelchair users, were struggling to manoeuvre through the remaining door. The Applicant was also conscious that if Emergency Services were required to transport a homeowner through the doors a standard size stretcher would have difficulty and a bariatric stretcher (wider) would not fit at all through the remaining operational door.
4. The Applicant stated that the works required to remedy the defect were the supply and installation of automated swing doors at the main entrance of the development.
5. The Applicant sought dispensation on the grounds of the urgency of the matter particularly in relation to health and safety. The Applicant said it had been keeping homeowners informed of the situation.
6. On 17 January the Tribunal directed the Applicant to serve the directions and the application on the Respondents. The Applicant failed to do that and applied for further directions with revised dates. The Tribunal granted the Application and issued revised directions.
7. On 30 January 2023 the Tribunal directed the application to be heard on the papers unless a party objected within seven days. Further the Applicant was required to serve the application and directions on the Respondents. On 6 February 2023 Applicant confirmed that it had provided the Respondents with the application and directions.
8. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 20 February 2023 indicating whether they agreed or disagreed with the Application. The Tribunal received two completed forms from the leaseholders at Flats 32 and 42 who agreed with the Application.
9. The Tribunal also directed the Applicant to confirm to the Tribunal by 27 February 2023 that no objections have been received from the leaseholders. On 20 February 2023 the Applicant confirmed that it had received no objections.

## Determination

10. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
11. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
12. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
13. Lord Neuberger in *Daejan* said at paragraph 44

“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 s 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”.
14. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

15. The Tribunal now turns to the facts. The Tribunal is satisfied that the works to the swing doors are urgent to allow access to the property by homeowners and emergency services. The Tribunal accepts that if the Applicant had to embark on the full statutory consultation process it would add unnecessary delay to the carrying out of the works. The Tribunal takes into account that the leaseholders have been informed about the works and that no leaseholder has objected to the Application.
16. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

### **Decision**

17. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works to the swing doors.**
18. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

## **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.