



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

**Case Reference** : CHI/00ML/LDC/2022/0106

**Property** : 26 Brunswick Terrace, Hove BN3 1HJ

**Applicant** : 26 Brunswick Terrace Hove (Freehold)  
Company Ltd

**Representative** : Deacon Crickmay Asset Management

**Respondent** : Mr B Gravett (11A Brunswick Street West)

**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** : D Banfield FRICS  
Reginal Surveyor

**Date of Decision** : 19 January 2023

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**DECISION**

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## **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. The application was received on 12 December 2022. The works have yet to be started.
2. The Applicant explains that works are required to the lift at the property “*as set out on attached quotes*”. The Tribunal notes that these have not been included with the application.

First Notices have been served on the Respondents as part of the consultation process that has been carried out.

Dispensation is sought “*to enable the lift to be put back in working order as soon as possible.*”

The Applicant explains that “*Having the lift out of action is making access to the upper floors very difficult particulalry [sic] for elderly visitors and relatives.*”

3. The Tribunal made Directions on 22 December 2022 setting out a timetable for the disposal and requiring the Applicant to send them to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.
4. Two lessees responded one agreeing to the application and one objecting. Those lessees who did not respond or who agree are therefore removed as Respondents.
5. The only request for an oral hearing was received out of time and is refused. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.
6. 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 both the issues and objections are clearly stated and would not be assisted by receiving oral evidence.

## **The Law**

7. 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.

8. 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;
  - a. 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.
  - b. 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.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. 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).
  - f. 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.
  - g. 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.
  - h. 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.
  - i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **Evidence**

9. The Applicant's case is set out in paragraph 2 above.
10. Mr Gravett has objected to the application on the following grounds;
  - The lift maintenance and repair have been subject to discussions over the past 2 years
  - The lift is only available to the residents of 26 Brunswick Terrace.
  - I live in a basement flat at the rear of the property and do not 'enjoy' the lift or its services and it is unfair that I contribute to the upkeep
  - There are stairs to all flats and floors in 26 Brunswick Terrace
  - To my recollection the stairs are (sic) fit for purpose
  - There is no urgency for these lift repairs and they are likely have been known about for some time (see 1)

## **Determination**

11. 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.
12. Clearly carrying out repairs to the lift should not be unduly delayed. A Notice of Intention has been served and by the application referring to "attached quotes" it is presumed that competitive quotations have been obtained.
13. This application does not concern whether the costs involved are payable by way of service charge. Whether Mr Gravett is obliged to contribute is a matter for the terms of his lease and will not be affected by a decision of the Tribunal. The issue for the Tribunal is whether, by granting dispensation any of the lessees have been "prejudiced" in the terms of the Daejan guidance referred to above.
14. A Notice of Intention has been served and competitive quotations obtained and as such I am unable to identify any prejudice that the lessees may sustain by the granting of the dispensation requested.
15. The Tribunal therefore grants dispensation from the remaining consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of lift repairs.
16. This dispensation is subject to the condition that competitive quotations are obtained.
17. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

18. The Applicant is to send a copy of this determination to all of the lessees liable to contribute to service charges.

D Banfield FRICS

19 January 2023

#### 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.