



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

Case Reference : CHI/18UG/LDC/2023/0020

Property : Vavasour House, North Embankment,
Dartmouth, Devon TQ6 9PW

Applicant : Vavasour House (Dartmouth)
Management Company Ltd

Representative : Carrick Johnson Management Services Ltd

Respondents : Mr Philip Liberson (Flat 2)
And 11 other 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** : 21 March 2023
Havant Justice Centre
Common Video Platform

Date of Decision : 6 April 2023

DECISION

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 received on 10 February 2023.
2. The property is described as a purpose built block of twelve flats constructed about 50 years ago.
3. The Applicant explained that it had previously applied successfully for an Order granting dispensation from consultation requirements in connection with the purchase and installation of two lifts at Vavasour House. Following the purchase and delivery of these lifts, Hanover Lifts, the chosen contractor for these works advised that substantial work was required to the lift shafts to accommodate the new lifts. The Applicant has been in dispute with Hanover Lifts about whose responsibility it was for the additional works, and this impasse has been ongoing since December 2020. In the meantime many of the elderly residents have been house bound due to no lift being installed for two years. The Applicant said there was one resident who has been unable to use the property due to a hip operation, and cannot use the stairs.
4. The Applicant requires dispensation for qualifying works described as:

“Protection to be set up to each lift lobby, removing the existing door sets to the original lift opening and cart away. Prop opening above to allow existing lintels to be removed, extend pocket and install longer lintels to facilitate the new opening, as marked by others. Stitch drill out blockwork to either side of opening to widen to the required width. Make good openings / lintels with plaster repairs – infill any pockets / holes left from original lift removal. Infill lift base and concrete a level pad 120 mm down from FFL – as per lift company drawing. Temporarily infill openings for safety as works are completed.

The above works to then be repeated over 2 x lift shafts x 8 no openings. Then to remove the existing door to electric cupboards under staircases x 2. Build new stud framework with FR plasterboard, dry lined and fire stopped as required. Infill front with 30mm FR framework, primer finish and fit 2 x angled FD30 doors to frames to provide extended storage area”.
5. The Applicant has received an acceptable quotation for the proposed works from an established contractor in the Torquay area. The quotation was in the region of £20,000 which the Tribunal understands will be funded from reserves. The managing agent has used the services of this contractor before and has always found the contractor reliable and giving a good standard of works. The managing agent has been unable to obtain other quotations because contractors which carry out such works were in high demand and unable to give a firm timescale for completion of the works. The Applicant states that

there is now urgency in getting these works completed so as to enable the residents to have access to their flats.

6. On 21 February 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 together with any relevant quotations and specifications for the works. On 24 February 2023 the Applicant confirmed that it had provided the Respondents with the application and directions.
7. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 8 March 2023 indicating whether they agreed or disagreed with the Application. Ten of the Twelve leaseholders had responded. Nine leaseholders agreed with application. One leaseholder Phillip Liberson of Flat 2 objected to the Application and did not agree to the application being determined on the papers.
8. On 9 March 2023 the Tribunal directed that the Application would be heard on 21 March 2023 at 2pm by video. At the hearing Miss Jasmine Northcott, Property Manager, represented the Applicant. Mr Carrick Johnson, the Managing Director for the managing agents, Mr D J Cawley, and Mr Brian Woodgate, directors of the Applicant were also in attendance. Mr Liberson appeared in person. The Applicants supplied a bundle of documents numbering 121 pages.

Determination

9. 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.
10. 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.
11. 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.

12. 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”.

13. 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.
14. The Tribunal now turns to the facts. Mr Liberson argued that the leaseholders should not have to pay for the mis-selling of the lifts by Hanover Lifts and for the failures of the directors to establish the proper scope of the works from the outset. In his view Hanover Lifts should accept responsibility for its mistakes and either make good on the works required to instal the lifts or take the lifts back and refund the monies. Mr Liberson stated that the Applicant should have commissioned lifts bespoke for the shafts at the property. Mr Liberson expressed concern that the costs for the additional works would overrun, and the leaseholders would be faced with a larger bill at the end of the works. Finally Mr Liberson said that he received no benefit from the lifts as his flat was on the ground floor and that the additional costs should be funded by the leaseholders who used the lifts..
15. The Applicant said that its directors shared the frustrations of Mr Liberson about the conduct of Hanover Lifts. The Applicant indicated that the directors have held meetings with Hanover Lifts to try and persuade them to take on responsibility for the building works but Hanover Lifts denied liability. The directors have taken legal advice which has confirmed that the Applicant has no right of legal action against Hanover Lifts.
16. Mr Carrick Johnson explained that at the outset of the project the Applicants explored the possibility of bespoke lifts, however, the costs of such lifts were in the region of £100,000 which exceeded the costs already incurred on the two new lists and the additional costs of the building work. Mr Carrick Johnson pointed out that the new lifts supplied by Hannover Lifts were to modern specifications and catering

for the needs of disabled persons which would not be available if the lifts were constructed to fit the existing lift shafts. Miss Northcott confirmed the good reputation of the proposed contractor to carry out the additional building works. Mr Woodgate one of the directors with knowledge of the construction industry had reviewed the quotation for the additional building works and considered it reasonable.

17. The Tribunal reminds itself that its decision is limited to dispensing with the requirement to consultation on additional building works. The Tribunal finds that these works are necessary to instal the new lifts to the property to enable ease of access by the occupiers and visitors to the flats on the upper floors. The Tribunal also finds that the Applicant has only been able to obtain a quotation from one contractor to carry out these works in a reasonable timescale. The Tribunal holds that the Applicant has conducted due diligence on the contractor to satisfy itself that the contractor is reliable and has a reputation for a good standard of works and that the quotation is reasonable. The Tribunal agrees with the Applicant that there is now urgency to complete the works. The Tribunal takes account of the fact that nine leaseholders and ten if Mr Woodgate is included, agrees with the application. Only Mr Liberson objects to the application.
18. The Tribunal has examined Mr Liberson's objections and decided that they are not relevant to the issues pertinent to consultation on the additional building works. His arguments are about how the project was set up in the first place and about who should pay for these additional works. The Tribunal considers that this application has to be considered from the perspective of where the Applicant is now, namely, it has to carry out the works in order to instal the new lifts. The fact that the Applicant's decision making may have gone awry when the new lifts were purchased is not an argument against the application for dispensation in respect of the additional building works. It may be an argument if Mr Liberson chooses to make an application under section 27A of the 1985 Act challenging the reasonableness of the costs. As to Mr Liberson's second point, the Applicant has taken legal advice and been informed that Hanover Lifts is not liable for the costs of additional works. Further Mr Liberson's liability to contribute to the costs of the additional works is determined by the terms of the lease for his property.
19. The Tribunal concludes that the Applicant has demonstrated that the leaseholders are **not** paying for inappropriate works and at a cost which is above the odds. Ten leaseholders agree with the Applicant's assessment and wish the works to proceed without undue delay. The Tribunal finds that Mr Liberson has failed to establish that the Respondents would suffer relevant prejudice if dispensation was granted unconditionally.

Decision

20. **The Tribunal grants an order dispensing with the consultation requirements in respect of the building works to the lift shafts at the property.**
21. 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 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.