



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/29UQ/LDC/2022/0075

Property : Marnock House, Kingswood Road,
Tunbridge Wells, Kent, TN2 4XP

Applicant : Aultmore (Tunbridge Wells) Management
Company limited

Representative : Alexandre Boyes

Respondent : -

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) : Mrs J Coupe FRICS

Date of Decision : 1 November 2022

DECISION

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Summary of the Decision

The Tribunal grants dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985 in respect of works required to the smoke vent system to ensure that the fire system is compliant with current standards.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 8 August 2022.
2. In their application the Applicant describes the property as a purpose built block of 24 flats. In supporting documentation, BK Fire Ltd describe the property as a *"single staircase building consisting of Ground, 1st 2nd and 3rd floors"*.
3. The Applicant states that dispensation is sought *"to ensure the fire system is compliant for the safety of the residents."* Further, that *"Works are required to the smoke vent system following a fault being identified ..."* and *"... works cannot wait for the Section 20 consultation period"*.
4. The Tribunal made Directions on 12 August 2022, advising that it considered that the application was suitable for determination on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 7 days. The Tribunal received no objections.
5. The Directions required the Applicant to send a copy of the application and the Directions to each Respondent and to confirm to the Tribunal that this had been done. By way of email 15 August 2022, the Applicant's representative confirmed compliance.
6. Further, the Applicant was required to send to the Tribunal and to the Respondents, if not already sent, copies of all relevant quotations and specifications for the works. The Tribunal did not receive any quotations or specifications of works and, by email of 14 October 2022 again requested copies of the same. On 16 October 2022, the Applicant's representative submitted, by email, the following:
 - i. ESF Fire Alarm Service Certificate: dated 24 January 2022
 - ii. BK Fire Ltd Certificate of Works: dated 9 August 2022
 - iii. BK Fire Ltd Quotation: dated 10 August 2022

7. Included within the Directions was a form for the Respondent Leaseholders to indicate to the Tribunal whether they agreed or opposed the application and whether they consented to the Tribunal determining the matter on the basis of written representations.
8. Eleven replies were received, all agreeing to the application. No objections were received. In accordance with paragraph 13 of the Directions, all leaseholders are removed as Respondents.
9. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
10. 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 remained unchallenged.
11. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

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

S.20ZA 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.

Discussion

13. There is no objection to this application by the leaseholders. However, the Tribunal must be satisfied under s.20ZA that it is reasonable to dispense with the consultation requirements.
14. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 ("Daejan") and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20. 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 Supreme 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.
15. The circumstances of the application are contained within the application form. In summary, following identification of a fault, works are required to the smoke vent systems to ensure compliance and the safety of residents. The Applicant is concerned that the fire alarm and smoke vent system is not fully operational and states that *"works cannot wait for the s.20 consultation period."* Consultation under s.20 has not commenced.
16. Evidence of the required works is provided in the form of a Certificate of Works prepared by BK Fire Ltd dated 9 August 2022 which details those works carried out and comments on the remedial works required. A quotation for such work, prepared by BK Fire Ltd and dated 10 August 2022 in the sum of £8,654.89, is submitted.

Determination

17. 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 referred to above.
18. Repairs to ensure a fully operational smoke vent system and fire alarm within a block of 24 residential units is clearly a matter of urgency. No leaseholder has raised any objection and therefore the type of prejudice referred to in Daejan has not been identified.
19. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements in respect of necessary works to the smoke vent systems.
20. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable. The leaseholders are not prevented from challenging the reasonableness of any service charge arising from the relevant work.
21. Accordingly, the Applicant may consider it prudent to obtain alternative quotations prior to awarding the contract.
22. The Applicant is to send a copy of this determination to all of the leaseholders liable to contribute to service charges.

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.