



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/19UJ/LDC/2022/0070

Property : Harbour Lights Court, North Quay,
Weymouth, Dorset, DT4 8DW

Applicant : McCarthy & Stone Retirement Lifestyles
Ltd

Representative : McCarthy & Stone Management Services

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 : D Banfield FRICS
Regional Surveyor

Date of Decision : 18 October 2022

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the "Supply and fit of UPS (Uninterruptable Power Supply) Batteries in the car park plant room"

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

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

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 22 July 2022.
2. The property is described as a purpose-built block of 43 flats comprising of one and two bedroom apartments, age restricted community for the over sixties.
3. The Applicant explains that *"The UPS battery system is in poor condition and requires urgent replacement as it is a key part of McCarthy & Stone fire safety system. This system will provide ventilation to homeowners in the event of a fire."*
4. The work required is to *"Supply and fit of UPS (Uninterruptable Power Supply) Batteries in the car park plant room. The UPS is part of the fire prevention system in the undercroft car park and in the McCarthy & Stone fire strategy."*
5. The Applicant further explains that *"McCarthy & Stone are seeking dispensation as the UPS batteries can only be supplied and installed by the original contractor - Kohler Power Uninterruptible. As such McCarthy & Stone cannot obtain quotations from other tenderers to proceed with the standard S20 consultation process and notifications. Kohler Power Uninterruptible has quoted us as below to complete these works: £14,763.60 including VAT for delivery, and installation of one string of 46 off Yuasa SWL3300FR batteries. The battery replacement prices above cover the cost of Kohler Uninterruptible Power arranging for the transportation from site, "Environment Agency site specific registration" where necessary and subsequent safe disposal of the old batteries in accordance with current legislation."*
6. The Tribunal made Directions on 9 September 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. On 15 September 2022 the Applicant confirmed that the documents had been distributed to the Leaseholders.
7. No responses were received and in accordance with the above, the lessees are therefore removed as Respondents.

8. 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.
9. 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.

The Law

10. 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.

11. 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

12. The Applicant's case is set out in paragraphs 2 to 5 above.

Determination

13. 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.

14. Clearly the maintenance of reliable safety equipment is essential and should not be subject to unnecessary delay. The applicant explains that the Special Waste Regulations 1996 require the originator of the waste to be responsible for its removal and as such it is not possible to seek quotations from alternative suppliers as required by S.20.

15. The Applicant has written to all homeowners advising them of the works and no objections have been received following receipt of the Tribunal's directions indicating that the type of prejudice referred to in the Daejan case above has been suffered. As such I am prepared to grant the dispensation required.

16. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the "Supply and fit of UPS (Uninterruptable Power Supply) Batteries in the car park plant room"

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
18 October 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 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.