



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

Case Reference : CHI/21UC/LDC/2023/0081

Property : Avonmore, 24 Granville road, Eastbourne,
East Sussex, BN20 7HA

Applicant : Avonmore Management Company
(Eastbourne) Ltd

Representative : Prestige Property Management Limited

Respondent : The Lessees

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 : 3 August 2023

DECISION

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 13 July 2023.

2. The property is described as:

“Avonmore is a purpose built residential block of 15 flats, over 7 floors (including the basement car park) constructed in the 1960's occupying a slightly sloping site in Granville Road, Eastbourne a residential area of the town.

Prestige Property Management Ltd were appointed as managing agents for the property on 1st July 2023 by Avonmore Management Company (Eastbourne) Ltd”.

3. The Applicant explains that:

“Upon becoming managing agents (sic) for the property, we were immediately alerted by the Directors regarding the potential of a fire due to burnt out and faulty extractor fan capacitors located in the roof space. The building has six fans, located west, east and centre in the loft space. Three fans work constantly (24 hours) to reduce the temperature in the loft space, three are 'back up' fans. In case of failure the faulty fan is switched over to the relevant back up fan. Please note, all fans are of the same age.

Following the report of a strong burning smell, Temcon Ltd attended site. The extractor fan motor capacitor had caught alight and burnt out. The engineer enabled the back up fan. Unfortunately, the back up fan was observed to be extremely noisy and struggled to work and continues to do so. Temcon Ltd have recommended both fans be replaced as a matter of urgency, as they state the potential of the back up fan to overheat is extremely high. In the hot weather of the summer months the fans are imperative to the well being of the building. As all the fans are of the same age, Temcon Ltd together with our client are concerned that more fans will fail, and cause a fire in the roof space. As new managing agents, we have visited site and concur with their concern.

We would like to go ahead with the works, to remove the potential of fire in the roof space.

All leaseholders (sic) have been advised accordingly.

We seek dispensation for all consultation requirements as the required work is urgent, one extractor fan has burnt out and the back up fan is noisy and struggling to cope. Temcon Ltd have recommended the work is completed as a matter of urgency. We are concerned regarding the threat of fire, and the danger to all residents especially the penthouses on the top floor and the residents who have a Personal Emergency Evacuation Plan (PEEP) in place.”

4. The Applicant has supplied a copy of a quote from Temcon Ltd dated 22 May 2023.

5. The Tribunal's Directions of 17 July 2023 considered that the application must be dealt with as a matter of urgency. They identified that the only issue was whether dispensation from statutory consultation was reasonable and matters in respect of recovery through the service charge could be subject to an application under section 27A of the Landlord and Tenant Act 1985.
6. It was also said that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects.
7. The Tribunal required the Applicant to send to each lessee a copy of the application, the Directions and a pro-forma reply form indicating whether the application was opposed and whether an oral hearing was required.
8. Two responses were received both in agreement with the application. The Tribunal therefore proceeds to determine the application on the papers and without objection from the lessees.
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 and 3 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. No objections have been received. No prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant the dispensation required.

15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising the replacement of two fans in the roof space.
16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
17. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
3 August 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 rpcsouthern@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.