



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

Case Reference	:	CHI/00MR/LDC/2023/0171
Property	:	Quay House, Broad Street, Southsea, Hampshire, PO1 2GL
Applicant	:	Quay House (Portsmouth) Ltd
Representative	:	Dack Property Management
Respondent	:	The 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	:	D Banfield FRICS, Regional Surveyor
Date of Decision	:	31 January 2024

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Repair works to the lift ropes due to damage from failed equipment.

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

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 11 December 2023.
2. The property is described as a “4 storey covered (sic) office block consisting of 17 flats.”
3. The Applicant explains that the application is to be treated as urgent as there are elderly disabled residents within the building who require the lift to enter and exit the building without assistance.
4. The works are described as,

“Repair works to the lift ropes due to damage from failed equipment. No works have been carried out yet, however parts will be ordered shortly.”

It is further stated that,

“A Notice of Intent will be issued – however it is not possible to obtain two quotations.”

And further,

“Please see below from the lift engineers.

Following our conversation earlier please see the attached quote for works to be carried out at the above site. As you are aware this is a KONE lift installed in 2009 and Kone no longer manufacture this product. We have exhausted all other avenues regarding obtaining the main suspension ropes and due to the specialist construction only KONE will supply, this also applies to the encoder/Taco unit. We have been advised that both items are subject to an 8-10 week lead time from receipt order. I have also placed below our engineers’ findings from his original visit.

‘Attended site to investigate the noises at top landing of the lift as reported in LOLER inspection. Unable to access on own, 2nd engineer called to assist. On inspection found damage/kink in one of the main lifting rope, rope appears to have jumped Channel on one of the diverters. Tech support contacted, advised this is not an unknown issue with type of roping configuration and is likely due to motor encoder/tacho fault. On inspection found fault on the encoder, incorrect speed being registered to actual speed of lift, suspect the kink/damage to the rope to be caused by the encoder issue. Advised replacement motor encoder/tacho is required and re roping is also required. Lift has been left isolated, office to advise.’”

5. A copy of a quote from Classic Lifts dated 8 December 2023 has been provided.
6. The Tribunal made Directions on 2 January 2024 which required the Applicant to send it to the Lessees together with a form for them to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. If the Leaseholders agreed with the application or failed to return the form they would be removed as a Respondent although they would remain bound by the Tribunal's Decision.
7. On 3 January 2024, the Applicant confirmed that the Directions had been served on the Lessees.
8. No responses were received from the lessees and no requests for an oral hearing were made. 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 paragraph 4 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. A Notice of Intent was intended to be served but it was not possible to obtain alternative quotations. No objections have been received from the lessees and in these circumstances I am prepared to grant conditional dispensation.
15. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Repair works to the lift ropes due to damage from failed equipment.**
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
31 January 2024

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.