



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

Case Reference	: CHI/21UC/LDC/2023/0167
Property	: Kepplestone, Staveley Road, Eastbourne, East Sussex, BN20 7JZ
Applicant	: Kepplestone (Eastbourne) Limited
Representative	: Southdown Estates Limited
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	: 25 January 2024

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of replacing the lift to Block C.

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

The Applicant must send a copy of this determination to the lessees

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 6 December 2023.
2. The property is described as,

“KEPPLESTONE COMPRISES THREE BLOCKS OF FLATS. A AND B ARE JOINED AND FACE OUT TO SEA; BLOCKS C AND D HAVE A FRONT ELEVATION ON STAVELEY ROAD. THERE ARE THIRTY FLATS AND TWENTY TWO GARAGES. THERE IS ALSO A CARETAKERS FLAT FOR THE RESIDENT CARETAKER. THIS ART DECO DEVELOPMENT WAS BUILT IN 1938/9. EACH BLOCK HAS ITS OWN LIFT, FOUR IN TOTAL.”
3. The Applicant explains that the lift in Block C has broken down and they would like to repair it as soon as possible with the safety of knowing that section 20 of the Landlord and Tenant Act 1985 will not have been breached.
4. It is stated that,

“LEASEHOLDERS HAVE BEEN SERVED WITH A NOTICE OF INTENTION THAT REPAIRS ARE REQUIRED TO ALL 4 LIFTS AT KEPPLESTONE, INCLUDING BLOCK C WHICH HAS THE BROKEN DOWN LIFT.

And further

“THE BOARD OF DIRECTORS OF THE FREEHOLD COMPANY FEEL THAT REPAIRS TO THE BLOCK C LIFT ARE URGENT AS SOME ELDERLY RESIDENTS ARE HAVING MOBILITY ISSUES WHICH MAY EFFECT THEIR HEALTH. FOR EXAMPLE, IN ATTENDING MEDICAL APPOINTMENTS AND USING THE STAIRS CAN BE A PHYSICAL STRAIN FOR SOME.”
5. The Tribunal made Directions on 12 December 2023 which required the Applicant to immediately send copies to the Leaseholders and confirm that they had done so by 18 December 2023. On enquiry from the Tribunal the Applicant said that the Directions had not been sent to the Lessees and made an application to allow service on 22 December 2023.
6. To have permitted such late service would have shortened the time allowed for the Lessees to respond and was therefore refused.
7. Further Directions were made on 27 December 2023 allowing further time for the Lessees to respond.

8. No responses were received 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 paragraphs 2 to 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. No objections have been received from the lessee 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 replacing the lift to Block C.**
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 a copy of this determination to the lessees.

D Banfield FRICS
25 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.