



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

Case Reference : CHI/43UJ/LDC/2024/0016

Property : Flats 1-12 Pennethorne, 6 Portsmouth Road, Camberley, GU15 1LA

Applicant : Pennethorne Management Company Limited

Representative : Pinnacle Property Management Limited

Respondents : 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 : Mrs J Coupe FRICS

Date and Venue of Hearing : Determination on Papers

Date of Decision : 19 February 2024

DECISION

The Application

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 17 January 2024.
2. The property is described as:
“3 storey brick, purpose built block of 12 flats with pitched roof, lift and pumps.”
3. The Applicant explains that:
“The lift requires new parts which are on order but the supplier has given a lead time of 5-7 weeks (the lift contractor is expecting delivery at the end of January or beginning of February). In the lift shaft there is a pump system and tank and when the pump system failed, water and oil entered the lift shaft causing damage to the lift. The plan is to move the pump tank to the lift motor room and install a new pump which will prevent any repeat of this issue. The lift contractor has already moved the tank and is monitoring the existing pump system to ensure it is working at all times.

The directors of the resident management company has [sic] consulted with 3 lift contractors and obtained quotes for the necessary work. The residents/leaseholders have been made aware of the issue and the lead time for the work to be completed. A further communication was sent regarding moving the pump tank and another letter will be sent once the lift contractor is in receipt of parts and we have a date for the work to be scheduled. The leaseholders are aware of the costs and provision has been made within the service charge budget. A Notice of Intention was also sent in December 2023.

The level of inconvenience and mental and physical wellbeing of at least one of the residents requires urgent repairs beaing [sic] in mind the lift has already been out of service approaching 3 months. All of the leaseholders are aware of the situation and are happy for the work to proceed. The directors of the RMC are in constant contact with residents ensuring they are updated and are provided with all information.”

4. On 1 February 2024 the Tribunal directed that the application would be determined on the papers without a hearing unless a party objected in writing within 7 days. No objections were received.
5. The Tribunal directions stated that neither the question of reasonableness of the works, nor the costs incurred were included in the application, the sole purpose of which is to seek dispensation.
6. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 12 February 2024 indicating whether they agreed or disagreed with the application.

7. The Tribunal received representations from the lessees of Flat 9, Flat 10 and Flat 11, with each lessee indicating agreement both to the application and to the matter being decided on the basis of written representations only. No objections to the application were received from any other lessee.

Determination

8. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
9. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
10. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
11. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
12. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should

look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

13. The Tribunal now turns to the facts.
14. The Tribunal is satisfied that it is necessary to carry out remedial and associated works to a lift within a three-storey building, as outlined in the application. The Tribunal accepts that such work is urgent and that the Applicant has endeavoured to communicate and consult with the Respondents throughout this process. The Tribunal takes account of there being no objections from any of the Respondents and no prejudice has been demonstrated or asserted.
15. On the evidence before it the Tribunal is therefore satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

16. **The Tribunal grants an order dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of those lift remedial and associated works identified in the application, on the condition that the Applicant provides a copy of this decision to all leaseholders and confirms to the Tribunal within 7 days that it has done so.**

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.