FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CM/LDC/2023/0052**
Property	**:**	**Flats 1 – 42 (excluding 4 and 13), St Margaret's Court, Hylton Castle Road, Sunderland SR5 3ED**
Applicant	**:**	**Anchor Hanover Group**
Respondents	**:**	**The various assured tenants at the property who pay variable service charges**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 20ZA**
Tribunal Members	**:**	**Judge J M Going** **A Davis MRICS**
Date of Decision	**:**	**13 February 2024**

DECISION

The Decision

Any remaining parts of the statutory consultation requirements relating to the lift repairs which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 28 July 2023 ("the Application") the Applicant ("Anchor") applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of works urgently required to the lift at the property ("the lift repairs ").

2. The Tribunal issued Directions on 3 October 2023 confirming that it considered that the Application could be resolved on submission of written evidence leading to an early determination, but that any of the parties could request an oral hearing. None have done so.

3. Anchor has provided the Tribunal with a bundle of documents and confirmed that further copies were served on each Respondent ("Assured Tenant") before the end of October 2023.

4. The bundle includes copies of the Application, letters, Anchor's statement of case, a sample lease ("the Lease"), official copies of its registered freehold title, the service charge budget for 2023/2024, various reports from the lift engineers in respect of multiple callouts, and their quotation for the lift works. The bundle also included a copy of a formal first stage notice served on the Assured Tenants on 25 May 2023 in compliance with the provisions set out in section 20 of the 1985 Act relating to consultation.

5. None of the evidence has been disputed.

The facts and background to the Application

6. St Margaret's Court has not been inspected by the Tribunal but is described in the Application as providing purpose-built housing for rent for over 55's in Sunderland and comprising 6 one-bedroom and 31 studio apartments together with 3 one-bedroom bungalows. The Tribunal has been able to gain valuable insights as to the nature of the development from Google's satellite images and the, albeit restricted, views from Google's street view. It is clear that the main single block within the development has accommodation on 3 separate floors.

7. The Lease, which notes that Anchor is a charitable housing association, confirms that the Assured Tenants are to pay, in addition to rent, a service charge for various services provided by Anchor. It specifies that such service charges are to be paid monthly and for there to be balancing payments made annually, having regard to how much has actually been spent on providing the services in the previous year.

8. Such provisions bring the Lease within the ambit of sections 18 to 30 of the 1985 Act.

9. The detailed breakdown of the costs included within the Schedule of services and charges for the 2023/2024 service charge year refers (inter-alia) to the payments for the lift, service contracts both for it and its regular inspection, and system repairs.

10. Anchor wrote to each Assured Tenant in a letter to be delivered by its local manager in the week commencing 31 July 2023 in the following terms: – "As you will be aware since March 2023, we have experienced numerous failures with the operation of the lift. Whilst we have attempted to repair the lift, it became evident that the lift required a major refurbishment to put it back into reliable service. As a result, we launched a consultation with all residents in May this year.
However, as a result of the impact the lack of a workable lift was having, we decided to go ahead with the works immediately and I am pleased to say that works to the lift were completed on 26 July 2023.
The works were quoted at £23616.25+VAT and included the following works:
Works include:

- Replacement Controllers and Power Pack Control Systems
- Power supply
- Tanks
- Car, and landing controls
- lift car overload system
- auto levelling facility and emergency passenger release facility.

Due to the urgency of the work, we made the decision to undertake this work without carrying out any further formal section 20 consultation.
When we decide to do this, we must apply to the First Tier Tribunal. In accordance with the formal Section 20 process, we have now submitted an application to the First-tier Tribunal (Property Chamber) to request dispensation from the requirement to consult….".

11. The Tribunal's Directions confirmed that any Assured Tenant who opposed the Application should, within the stated timescale, send to Anchor and to the Tribunal any statement they might wish to make in response.

12. None have done so, and the Tribunal convened on 12 February 2024 to determine the Application.

The Law

13. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

14. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4 stage process: –

- Stage 1: Notice of intention to do the works

Written notice of its intention to carry out qualifying works must be given to each tenant and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting tenants to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

The Landlord must seek estimates for the works, including from a nominee identified by any tenants or the association.

- Stage 3: Notices about estimates

The Landlord must supply tenants with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by tenants and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

The Landlord must give written notice to the tenants within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the tenants' nominee.

15. Section 20ZA(1) states that: –

"Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works… the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

16. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements which are part and parcel of a network of provisions, is to give practical support is to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;

- The financial consequences to the landlord of not granting of dispensation are not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

17. The Tribunal began with a general review of the papers, to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of its procedural rules permits this provided that the parties give their consent (or do not object when a paper determination is proposed).

18. None of the parties have requested an oral hearing and having reviewed the papers, the Tribunal is satisfied that this matter is suitable to be determined without a hearing. The documentation, which has not been challenged, provides clear and obvious evidence of the contents and the relevant facts, allowing conclusions to be properly reached in respect of the issues to be determined.

19. Before turning to a detailed analysis of the evidence, the Tribunal reminded itself of the following considerations: –
- The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
- In order to grant dispensation the Tribunal has to be satisfied only that it is reasonable to dispense with the requirements: it does not have to be satisfied that the landlord acted reasonably, although the landlord's actions may well have a bearing on its decision.
- The Application does not concern the issue of whether or not service charges will be reasonable or payable. The Assured Tenants retain the ability to challenge the costs of the works under section 27A of the 1985 Act.
- The consultation requirements are limited in their scope and do not tie Anchor to follow any particular course of action suggested by the Assured Tenants, and nor is there an express requirement to have to accept the lowest quotation. As Lord Neuberger commented in *Daejan* "The requirements leave untouched the fact that it is the landlord who decides what works need to be

done, when they are to be done, who they are done by, and what amount is to be paid for them".

- Albeit, as Lord Wilson in his dissenting judgement in the same case also noted "What, however, the requirements recognize is surely the more significant factor that most if not all of that amount is likely to be recoverable from the tenant."
- Experience shows that the consultation requirements inevitably, if fully complied with, take a number of months to work through, even in the simplest cases.
- The Office of the Deputy Prime Minister in a consultation paper published in 2002 prior to the making of the regulations explained "the dispensation procedure is intended to cover situations where consultation was not practicable (e.g. for emergency works)…."

20. Applying the principles set out in *Daejan* the Tribunal has focused on the extent, if any, to which the Assured Tenants have been or would be prejudiced by a failure by the Anchor to complete its compliance with the consultation requirements.

21. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the Assured Tenants beyond the obvious facts of not having been consulted, or of having to contribute towards the costs of works.

22. Anchor's statement of case attests to "Between the period of March and late July 2023, our lift engineers attended St. Margarets Court 26 times to attempt to repair the lift and keep it in operation…. The repairs/replacement of parts, proved to be ineffective and the lift continued to breakdown, on multiple occasions residents and visitors had to be freed from the lift. A temporary stairlift was fitted on the 18 May 2023…. We received no nominations of contractors during the notice of intention stage or observations objecting to the scope of the works. During the consultation period in late June 2023; It became clear that several leaseholders were housebound because of the lift being out of operation completely. The lift broke down five times during the Section 20 stage 1 consultation period before failing completely. We fitted temporary stairlifts on the main staircase in May 2023, however several residents were unable to use the stairlift for several reasons including dementia, wheelchair users who struggle to transfer, and we also had two instances of a resident pushing a mobility scooter down the stairs as they were unable to use the stairlifts. The lift… was out of service. We felt unable to leave the lift out of use any longer, commencing stage 2 of our consultation process would have meant we would have had to wait until the beginning of September (due to the shutdown on the continent during August, where parts are sourced)..which… would leave the residents without a lift, we therefore decided to progress the works based on the quotation we received on 19th May 2023 and seek dispensation from the consultation requirements from the Tribunal".

23. The Tribunal finds no evidence of any actual or relevant prejudice to the Assured Tenants: it is clear that they have been made aware, indeed were

already painfully aware, of the need for the lift repairs and received a Stage 1 notice; and there is no evidence that any dispute or have disputed the need for the lift repairs.

24. The Tribunal is satisfied from the evidence provided that after the lift engineers had been repeatedly called out between March and July to attempt to repair it, the lift works were rightly classified as an emergency.

25. The Tribunal is not surprised therefore by the lack of any objection to the Application. The potential adverse consequences of delaying the completion of the lift repairs to allow for the consultation requirements to be fully worked through, is likely to have been clear to all.

26. The Tribunal is satisfied that Anchor has made out a compelling case that the lift repairs were necessary, appropriate and urgent.

27. In the absence of any written objections and having regard to the steps that have been taken, the Tribunal has concluded that the Assured Tenants will not be prejudiced by dispensation being granted, unconditionally.

28. To insist now on the completion of the consultation requirements would serve no practical purpose.

29. For these reasons, the Tribunal is satisfied that it is reasonable to dispense with all those parts of consultation requirements that have not already been complied with.

Judge J M Going
13 February 2024