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

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| **Case Reference** | **:** | CHI/00MS/LDC/2024/0073 |
| **Properties** | **:** | Admirals Quay, The Blake Building, Ocean Way, Southampton, SO14 3LJ |
| **Applicant** | **:** | Brigante Properties Ltd |
| **Representative** | **:** | Karine Noemi, Residential Management Group |
| **Respondents** | **:** | (1) Mr J Campkin (193 Blake Building)<br>(2) The leaseholders |
| **Representative** | **:** | Mr Campkin appeared in person |
| **Type of Application** | **:** | Application for dispensation from consultation requirements – s.20ZA Landlord and Tenant Act 1985 |
| **Tribunal Members** | **:** | Judge MA Loveday<br>Regional Surveyor A Clist MRICS<br>Ms J Dalal |
| **Date and venue of hearing** | **:** | 8 October 2024<br>Havant Justice Centre (CVP) |
| **Date of Decision** | **:** | 10 December 2024 |

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**DETERMINATION**

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## Introduction

1. This is an application for dispensation from consultation requirements under s.20ZA Landlord and Tenant Act 1985 ("the 1985 Act").

2. The matter relates to the Blake Building, a block on the Admirals Quay development at Ocean Way in Southampton. It comprises a mixed-use structure c.2014 in two parts. The north tower has 44 flats on 5 floors (nos.256-299) and the south tower has 70 flats on 8 floors (nos.186-255). The blocks are constructed of brick and block walls faced with various render systems and glazed spandrel panels to uppermost parts.

3. The applicant is the headlessee and landlord and the respondents are the lessees.

4. The matter has had an unfortunate procedural history for what is supposed to be a relatively simple process. The application is dated 19 March 2024, but the application could not proceed because the applicant failed to pay the application fee until 31 July 2024. Directions were given on 5 August 2024, and it was originally proposed for the matter to be determined on the papers without a hearing. Mr Jonathan Campkin, the lessee of 193 Blake Building, submitted a written objection on 15 August 2024. Directions were therefore given for a remote hearing to take place on 9 October 2024. Before the hearing, the applicant's managing agents Residential Management Group ("RMC") prepared an electronic hearing bundle, which included Mr Campkin's detailed written objections to the claim. The tribunal proceeded with the hearing and was addressed by Ms Karine Noemi of RMG and by Mr Campkin. During the hearing, Mr Campkin referred the tribunal to certain documents which had been attached to his written objections, which, for reasons which are unclear, were omitted from the hearing bundle. None of the parties had copies of these documents available during the hearing. Following the hearing, the tribunal members were provided with copies of these documents, and it was apparent that they were potentially relevant to the issues raised

during the hearing. Directions were therefore given for further written submissions to be made about these extra documents, and for the tribunal to reconvene at a later date to reach its decision. Unfortunately, due to these events, it has since proved difficult for the tribunal members to find time in their diaries to prepare its written reasons. The result has been a significant delay, but one which was ultimately largely down to the applicant's failure to pay the fees and to include all relevant documents in the hearing bundle.

**Background**

5. The background to the application is not disputed.

6. The papers include a sample lease of 261 The Blake Building dated 4 August 2014. For present purposes it is unnecessary to deal with the terms of the lease in any detail. Suffice it to say that by Pt.1 of Sch.1 to the lease, the flat demised to the lessee excluded "the external doors and … door frames and windows and window frames" fitted into the walls bounding the flat. By Sch.5, the landlord was obliged to repair and the lease further included standard form service charge provisions which required the lessee to contribute to these costs.

7. At all material times the applicant engaged RMG Ltd to manage the premises.

8. On 8 September 2023, Hampshire and Isle of Wight Fire and Rescue Authority served an enforcement notice on the applicant under Art.30 of the Regulatory Reform (Fire Safety) Order 2005. Schedule 1 to the notice specified five separate requirements to be complied with by 1 January 2024. Para 2 required the applicant to undertake the following material works:

> "Ensure that all doors-sets leading onto and along the means of escape are properly maintained. This includes corridors, stairways, cupboards and flat front doors.
> The term 'door-set' refers to the complete element as used in

practice:

- The door leaf or leaves.
- The frame in which the door is hung.
- Hardware essential to the functioning of the door-set.
- Fitted with a positive action self-closing device.
- Intumescent seals and smoke sealing devices."

9. RMG obtained a quotation for works to the doors from Target They consisted of the following:

- Fill hole in door / door frame
- Hardwood inserts to door
- Repair and installation of new signs, pull plate, push plate or door handle
- Ease and adjust
- Install hinge packer
- Install lipping to door base
- Install routed drop down seal
- Route door for seals
- Install lipping where seals are not required
- Replace of seals
- Replace hinges
- Adjust Closers

The quotation amounted to £44,012.22, including VAT.

10. On 25 September 2023, RMG wrote to the lessees explaining the need for the works and stating that it would be serving both a Notice of Intention to carry out works and a statement of estimates under para 4. In fact, the

Notice of Intention under para 1 of Pt.2 of Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 was attached to the letter. It described the works as "Remedial repairs and replacement of the fire doors which have been identified during the Fire Door Survey to ensure compliance with the Regulatory Reform Fire Safety Order 2005, article 8(1), 10 and 14(2)(b)" and invited written representations by 31 October 2023.

11. According to the applicant, no observations were received during the period allowed by the Notice of Intention.

12. It appears that once this period expired, the applicant retained Target to carry out the door works. On 20 December 2023, Target rendered an invoice for £44,012.22, including VAT for attending site between 3 November 2023 and 20 December 2023. The application was served on the lessees on 19 March 2024

**The applicant's Case**

13. The applicant's principal case was that the works were necessary and urgent, as recommended by Hampshire and Isle of Wight Fire and Rescue Authority. The applicant referred to s.20ZA(1) of the 1985 Act and to *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854. The leaseholders had not been prejudiced within the sense given in *Daejan v Benson*.

14. In her oral submissions at the hearing, Ms Noemi summarised these arguments. When asked by the tribunal, she explained that another contractor had been approached, but it had been unable to comply. The applicant had used Target on other projects, they had 25-years'experience of facilities management and were experts on fire safety remediation work. In written submissions following the hearing, the applicant attached documentary evidence showing it sought to obtain a second quote from Xtra Maintenance. The proposed quote was £46,800 inc. VAT. The contractor

required additional checks and surveys, which would have resulted in a breach of the Notice of Enforcement. Consequently, the applicant proceeded with Target Maintenance based on its established credibility and accreditation.

15. The further written submissions denied the applicant had ever promised to cap the cost of works at £250 per leaseholder. In essence, Mr Campkin had still failed to show relevant prejudice within the meaning of *Daejan v Benson*.

**The case for Mr Campkin**

16. In his statement of case, Mr Campkin argued as follows:
    (a) The managing agent should not have stated that it would obtain a second estimate for competitiveness and give a Statement of Estimates. Leaseholders were totally unaware of the situation and were misled and poorly informed. They could have acted if they had been made aware of the correct situation.
    (b) Competitiveness has not been achieved at the relevant financial prejudice of leaseholders.
    (c) Highfields, a property maintenance company, had attended the Blake Building in 2019 to conduct relevant remedial work on the building's fire doors. Details of the work to the doors carried out and paid for by lessees in 2019 were "vague". The lack of information was at the total financial prejudice of leaseholders.
    (d) The additional work required was also at the total inconvenience of all leaseholders in the building.
    (e) The Freeholder and managing agent were well aware of the need to tend to the fire doors long before Hampshire Fire and Rescue's improvement notice.
    (f) The Notice of Intent makes no reference to the Hampshire Fire and Rescue improvement notice and makes no suggestion that the works were urgent.

(g) Work was not completed on site until late December 2023/early January 2024 so there was sufficient time for multiple quotes to be obtained. There is no relevant excuse/explanation for competitiveness not to have been achieved at the financial prejudice of leaseholders.

(h) The Freeholder and managing agent did not explore the option of appeal or deadline extension on the Hampshire Fire and Rescue improvement notice in order to ensure a full and thorough consultation and observation process was followed and leaseholders were not financially prejudiced.

(i) The managing agent had sufficient time to quarrel on who is liable for costs. It initially disclosed to leaseholders in October 2023 via newsletter that it would not pass any costs back to leaseholders. It then began communication with Bouygues, the developer, to cover cost. If the managing agent and freeholder had time to dispute with the developer, it had time to conduct the relevant consultation with leaseholders.

(j) RMG continuously stated that it did not expect costs to breach £250 per leaseholder. Suddenly leaseholders are being asked to pay £425 per flat. That is a considerable margin of difference, and it is beyond reasonable doubt that a consultation process and full tender process would have eliminated financial prejudice for leaseholders.

17. At the hearing, Mr Campkin repeated the above points. When asked by the tribunal what his reaction would have been had he been provided with two estimates and a statement of estimates, he candidly admitted "I don't know what I would have done".

18. The additional documents provided to the tribunal included a letter from RMG dated 10 June 2022 which informed Mr Campkin that "there are works which are needed to be carried out at your property further to a recent Health & Safety Fire Risk Assessment". This again referred to the intention to give both a Notice of Intent and a Statement of Estimates. In

his additional submissions after the hearing, Mr Campkin suggested the additional evidence proved conclusively that (i) the freeholder and managing agent were aware of the door safety issues as early as June 2022, so the works were not therefore urgent and that (ii) he was informed the work would not go above £250 on 20 December 2023, a mere handful of days before the work was completed.

**Discussion**

19. The material provisions of s.20ZA of the 1985 Act are as follows:

> "**20ZA Consultation requirements: supplementary**
>
> (1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

20. The principles on which dispensation is considered were of course dealt with by the Supreme Court in the leading case of *Daejan Investments Limited v Benson* (supra). These principles can be summarised as follows:

(a) The main, indeed normally, the sole question for the tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA(1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

(b) The financial consequences to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

(c) It is not appropriate to distinguish between "a serious failing" and "a technical, minor or excusable oversight", save in relation to the prejudice it causes.

(d) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

(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 remains throughout on the landlord. The factual burden of identifying some 'relevant' prejudice that they would or might have suffered is on the tenants.

(g) 'Relevant' prejudice is given a narrow definition; it means whether non-compliance with the 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) Tribunals will view the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works or services would have cost less (or, for instance, that major works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points. The more egregious the landlord's failure, the more readily a tribunal would be likely to accept that the tenants had suffered prejudice.

(i) Where the tenants were not given the requisite opportunity to make representations about proposed works to the landlord, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it.

(j) Once the tenants have shown a credible case for prejudice, the tribunal should look to the landlord to rebut it.

21. In this case, the tribunal is satisfied that the applicant has acted reasonably in its approach to the door works. Whatever the long-term problems with the doors, the applicant had to comply with the fire notice in a relatively short time frame. It obtained a quotation from Target, and apparently also pursued another from Xtra Maintenance and was able to commence the consultation exercise in Sch.4 to the consultation regulations.

The applicant's failure to comply with the strict consultation requirements is not 'egregious' in the sense used in *Daejan v Benson*.

22. More significantly there is no evidence any relevant prejudice was caused by the wording of the covering letter served with the Statement of Intent, or the failure to serve a statement of estimates.

23. In the circumstances, there is no reason for the tribunal readily to accept that the tenants have suffered any relevant prejudice. There is no evidence the failure to consult 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 effect, Mr Campkin says his prejudice is the loss of the right to object to the works or to the costs involved. But he does not suggest he would have proposed other or cheaper contractors as an alternative to those chosen by the applicant in the circumstances where works were urgently needed. The factual burden of identifying some 'relevant' prejudice that Mr Campkin would or might have suffered is on him, and he has not discharged that burden.

24. As it turned out, the additional documents did not have any material effect on the tribunal's decision. There was no evidence of any promise by the applicant to cap the costs at £250 per flat, and the evidence of events in June 2022 merely showed that the applicant knew enforcement action might be forthcoming at that stage.

25. It follows that the tribunal considers it is reasonable to dispense with the consultation requirements. However, since the applicant has partly complied with them, it is only necessary to dispense with paras 4-6 of Pt.2 of Sch.2 to the 2003 regulations.

26. Finally, the tribunal stresses, as it always does, that the finding does not preclude Mr Campkin or other lessees from contesting the costs of works to the doors in other ways. For example, any lessee may still bring a claim suggesting the costs were not reasonably incurred under s.19(1) of the

1985 Act or irrecoverable under Sch.8 to the Building Safety Act 2022. This decision does not affect the availability of these or other arguments.

**Decision**

27. For the reasons given above, and in accordance with s.20ZA Landlord and Tenant Act 1985, the tribunal grants dispensation from the requirements of paras 4-6 of Pt.2 of Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the relevant costs of fire safety works to doors undertaken between 3 November 2023 and 20 December 2023.

Judge Mark Loveday
10 December 2024

## Appeals

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.