



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

Case Reference : CHI/00HE/LDC/2024/0088

Property : St Aubyns, Marine Drive, Looe, Cornwall,
PL13 2DH

Applicant : St Aubyns (Looe) Management Company
Limited

Representative : Plymouth Block Management

Respondent : St Aubyns Property Limited (Flat 1)
D J & R M Swindells (Flat 2)
Mrs O Fleet & Mr A Ikssi (Flat 3)
Mr & Mrs D Outen (Flat 4)
Mrs P Ellis (Flat 5)
Mrs F Mortimore (Flat 6)

Representative : None

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 : I R Perry FRICS

Date of Decision : 6th January 2025

DECISION

Summary of the Decision

- 1. The Applicant is granted retrospective 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 in relation to lift repairs. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

2. 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 13th May 2024.

3. The property is described as a purpose-built building consisting of 6 flats over 3 floors with a front and rear (sic) communal garden, parking area and garages.

4. The Applicant explains that:

As a result of the bi-annual LOLER and lift maintenance inspections the following items were identified as needing (sic) immediate attention:

- 1) Supplementary Inspection Test for the ultimate limit switch.
- 2) Emergency Dialler was not connecting to the external call centre.
- 3) Redundant holes were detected in the interior wall of the lift car.
- 4) A safety Barrier was advised to be purchased and kept on site.
- 5) An electrical safety mat was not available at the property and one was therefore required.
- 6) Motor Room Door has no lock.
- 7) The Lift Well lighting was unsuitable.
- 8) Rescue instructions need to be displayed within the Lift Car.
- 9) The motor room is required to have a sufficient (sic) emergency light fitted.
- 10) An emergency stop button is required to be fitted to the top of the Lift Car.
- 11) Effect Break Capacitor Repairs as specified in LOLER Report

Due to the lift being out of service until these items were resolved the work was instructed without any consultation. The Leaseholder requiring the lift was kept informed of progress until the works were completed and a full report was given on the expenditure at the AGM in December 2023.

The presence of a disabled resident who relies on the lift requires us to repair the lift at the earliest opportunity –

5. The Tribunal gave Directions on 24th October 2024 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.

6. The Directions stated that the Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers.
7. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the Leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The Leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

The Law

8. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease / to enter into a Long Term Qualifying Agreement being an agreement of 12 months or more with a cost of more than £100 per annum per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
9. 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.
10. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
11. The leading judgment of Lord Neuberger explained that a Tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were a means to an end, not an end in themselves.

12. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
13. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.
14. The main, indeed normally, the sole question, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
15. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
16. If dispensation is granted, that may be on terms.
17. There have been subsequent Decisions of the higher Courts and Tribunals of assistance in the application of the Decision in Daejan but none are relied upon or therefore require specific mention in this Decision.

Consideration

18. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and if opposed, to provide a statement setting out why they oppose.
19. Mr C Pearce of Pearce Fine Homes, the Freeholder, and Mrs Mortimore of Flat 6 have returned the reply form, confirming their agreement to the application. Replies were not received from the remaining flats.
20. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.
21. The reason why dispensation from consultation requirements is said to be required is due to the urgency of the works to protect the safety of residents and to allow access to an upper floor flat by a disabled resident. Given the nature of the works and the fact that it related to the safety and welfare of the building and its occupants, I am satisfied that the qualifying works were of an urgent nature.

22. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
23. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
24. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
25. The Tribunal consequently finds that it is reasonable to dispense with all the formal consultation requirements in respect of the major works to the building as described in this Decision.
26. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works for lift repair and maintenance as outlined at paragraph 4. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
27. In reaching my decision I have taken account of the fact that no party has objected to the application. The Leaseholders have had opportunity to raise any objection and they have not done so. I do however **Direct** that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the Leaseholders so that they are aware of the same.

RIGHTS OF APPEAL

28. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
29. 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.
30. 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.
31. 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.

