



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

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| Case reference | : | HAV/45UC/LDC/2024/0511 |
| Property | : | Pagham Court, 262 Hawthorn Road, Bognor Regis, West Sussex, PO21 2UP |
| Applicant | : | McCarthy & Stone Retirement Lifestyles Limited |
| Respondents | : | The leaseholders of the Property |
| Type of Application | : | Application for the dispensation of consultation requirements pursuant to S.20ZA of the Landlord and Tenant Act 1985 |
| Tribunal Members | : | Tribunal Judge Hugh Lumby |
| Venue | : | Paper determination |
| Date of Decision | : | 28 March 2025 |

DECISION

Decision of the Tribunal

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act) in relation to major works with regard to the supply and installation a replacement lift in Block B of the Property.

The background to 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 20 August 2024.
2. The Property is a purpose built block of flats comprising of one and two bedroom apartments, age-restricted community for the over sixties.
3. The Applicant is the landlord of the Property and the Respondents comprise its leaseholders.
4. The application relates to works at the Property to supply and install a replacement lift in Block B of the Property.
5. The Applicant explains that they were advised by their lift contractor, Orona, that the lift needed replacing after an initial failure. The Applicant began a stage 1 section 20 consultation but repeated failures and engineer call outs led to lift the being isolated by Orona.
6. The Applicant believes that the works are urgent to assist vulnerable residents, especially those with mobility issues, to gain access to and egress from upper floors and to assist with movement of residents in medical emergency; it says two residents had to be transported down the stairs whilst the lift was out of action in order to reach ambulances. It argues that this creates a health and safety risk for residents. It therefore proceeded with the works without completing the consultation.
7. The Applicant has provided a quotation for the works from Orona, which shows a cost of £8,659 plus VAT. The works were completed on 31 July 2024.
8. There has not been a formal consultation with the leaseholders given the urgency to carry out the works. However, the Applicant states that it has been keeping them informed verbally, including at a coffee morning on 30 July 2024. They have also been informed by a letter from the Applicant's operations manager. The Applicant has confirmed that the Respondents have all been informed of this application and no objections have been received from them.

9. By Directions of the Tribunal dated 22 October 2024 it was decided that the application be determined without a hearing, by way of a paper case.
10. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
11. This has been a paper determination which has not been objected to by the parties. The documents that were referred to are the Applicant's application, a specimen lease, a list of the Respondents, a quotation for the works and the Tribunal's Directions dated 22 October 2024, the contents of which has been recorded.

The issues

12. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. 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 as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

Law

13. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
14. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
15. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
16. Section 20ZA relates to consultation requirements and provides as follows:

"(1) 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.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

....

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Findings

17. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

18. The Supreme Court came to the following conclusions:

- a. The correct legal test on an application to the Tribunal for dispensation is: ^[L T L]_{SEP SEP} “Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
- b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
- c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.

- d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
- e. The factual burden of identifying some “relevant prejudice” is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii in what way their rights under (b) above have been prejudiced as a consequence.
- 16. Accordingly, the Tribunal had to consider whether there was any “relevant prejudice” that may have arisen out of the conduct of the Applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

Consideration

- 17. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.
- 18. The Applicant believed that the works were urgent to assist vulnerable residents, especially those with mobility issues, to gain access to and egress from upper floors and to assist with movement of residents in medical emergency. On the evidence before it, the Tribunal agrees with the Applicant’s conclusions.
- 19. The Tribunal is of the view that, taking into account that there have been no objections from the Respondents, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the urgent works to supply and install a new lift machine to replace the then current one in Block B of the Property.
- 20. As a result, the Tribunal believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
- 21. Accordingly, the Tribunal grants the Applicant’s application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 in relation to major works with regard to the supply and installation a replacement lift in Block B of the Property.

22. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

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
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.