



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

**Case Reference** : CHI/00HE/LDC/2021/0076/AW

**Property** : Brunel Heights, Fore Street, Saltash,  
Cornwall PL12 6JY

**Applicant** : Frank Philips

**Representative** : Plymouth Block Management

**Respondent** : 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(s)** : Judge J. Dobson

**Date of Directions** : 8th September 2021

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**DECISION**

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## **Summary of the Decision**

- 1. The Applicant is granted 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 respect of major works, being works to a lift and related. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

## **The application and the history of the case**

2. Plymouth Block Management, named on the application form as the applicant but in the previous Directions in these proceedings as the Applicant's representative, applied for 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.
3. The Tribunal gave Directions on 13th August 2021, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
4. The Directions further stated that Tribunal would determine the application on the papers received and that having considered the application the Tribunal was satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11.
5. This the Decision made on that basis and following a paper determination.

## **The Law**

6. 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 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.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

8. 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.
9. 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”.
10. 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).
11. 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.”
12. 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.
13. 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.
14. If dispensation is granted, that may be on terms.

### **Consideration**

15. The Applicant explained in the application that the lift at the Property has been out of service for eight weeks causing access problems for residents who are elderly, and mobility challenged residents. The faulty drive unit in the lift requires replacement. It is said that the charges for the work fall only on certain Lessees.
17. The Applicant sought dispensation from consultation because of the stated urgency of the works.

18. A sample lease was provided with the application (“the Lease”), of Flat 15 and dated 11th October 2011. The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms.
19. The Lease names three parties, including the Applicant and the Lessee. The third is a management company, Brunel Heights (Saltash) Management Company Limited (“the Management Company”. There are commercial premises on the ground floor. The lift in question is described as serving Flats 11, 12, 13, 15 and 16. There are numerous definitions, including of the Service Charges, which the Lessee agrees to pay pursuant to clause 2.3.
20. The other relevant covenants are principally contained in clauses 5, 6 and 7 and in Schedules 5, 7 and 9. The Service Charges are payable under the terms of the Lease to the Management Company. The Management Company is responsible under the terms of the Lease for repairs and other services. The Applicant is only responsible for repairs and other services if the Management Company fails to provide them.
21. No indication has been given to what may have become of the Management Company. I have some concern as to whether it continues, is the correct Applicant and needs dispensation. However, I have adopted the approach that the Applicant has applied and has done so with the assistance of professional managing agents who ought to be aware of the position and the responsibilities of the freeholder and any management company, and where no other party has raised any query. I consequently have nothing to suggest that the application ought not to be granted because of being made by the wrong party. I am also mindful that the Management Company has not been given notice of this application or received a copy of the Directions but I adopt the same approach to that issue, namely that I have nothing to suggest that the application ought not to be granted because the Management Company still exists and should have been served.
22. There has been no response from any of the Lessees opposing the application. Indeed, the two Lessees who have responded have agreed to the application.
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, except for the potential delay and potential problems.
24. Accordingly, 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 of the formal consultation requirements in respect of the major works to the lift of the building.

26. 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 reasonable or payable. If a Lessee wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1968 would have to be made.
27. If the Applicant is not the correct party to apply for dispensation in light of matters referred to above as not being the party obliged to undertake the works and to whom the Service Charges are payable, this grant of dispensation will not assist the correct party, whether the Management Company or otherwise, being particular to the Applicant. The dispensation is also no more than that and does not convey with it any right on the part of the Applicant to demand Service Charges not otherwise payable to the Applicant.
28. If the Management Company does still exist, the Applicant shall by 15th September 2021 serve this Decision and the earlier papers in this application on the Management Company such that the Management Company may apply to the Tribunal if advised to do 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](mailto: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.