



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

Case Reference : CHI/00MS/LDC/2021/0040

Property : Charter House, 85 Canute Road,
Southampton SO14 3FZ

Applicant : 1520 Management Company Limited

Representative :

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 D R Whitney

Date of Determination : 4th June 2021

DECISION

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 replacement of electric door locks and intercoms.**

The application and the history of the case

2. The Applicants 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. The application sought dispensation from consultation in respect of the need to replace electronic door locks and intercoms which had ceased working. It was contended that replacement was the correct option and the Applicant sought to replace with a wireless system.
3. The Tribunal gave Directions on 4th May 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.
4. The Directions provided that any party who objects should complete a pro forma which was attached to the same. Only those parties who objected would remain listed as a Respondent. The Tribunal has received no objections.

The Law

5. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor enters into a qualifying long term agreement with a cost of more than £100 per lease in any one service charge year 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.
6. 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”.
7. 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.

8. 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”.
9. 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).
10. 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.”
11. 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.
12. 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.
13. If dispensation is granted, that may be on terms.
14. The effect of Daejan has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

Decision

15. I have considered all of the documents filed in this matter.
16. Responses were received from 13 of the 79 leaseholders (Flats 1, 3, 11, 16, 24, 26, 35, 43, 53, 62, 64, 70 & 72). All of those who responded confirmed they agreed with the application and were happy for the same to be dealt with on the papers.

17. I have considered whether the case remains suitable for determination on the papers. I am satisfied that it is. No leaseholder has objected to the application and the facts are not in dispute. The application is simply to consider whether or not dispensation from consultation should be granted.
18. The application form explains that the electronic door locks and intercom system at the Property have failed causing security and health and safety issues. The Applicant has investigated what works should be undertaken. The Application form refers to the Applicant notifying the leaseholders and also obtaining three quotes for works. They explain that whilst the current system is hard wired the quotes obtained are for a wireless system designed to “future proof” the system. A fourth quote for a hard wired system has also been obtained.
19. The application confirms that the Applicant has proceeded with the cheapest quote and the works have been funded from reserve funds.
20. I accept that the need to undertake such works would be urgent. Leaving the Property with malfunctioning security cannot be in the interests of any of the leaseholders. I am satisfied that such works should be undertaken promptly. It is plain from the submission that within the time constraints careful consideration has been given to notifying leaseholders and managing the works in an appropriate manner, including obtaining multiple quotes. The rationale behind a wireless system is plain to see.
21. I am satisfied that it is just and equitable in all the circumstances for dispensation from compensation to be granted to the Applicant. I have considered whether there is any prejudice and if any conditions should be attached to the same.
22. No leaseholder has suggested there is any prejudice and in the particular circumstances of this case I am satisfied that dispensation should be granted without any conditions being attached to the same.
23. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the sums being claimed by the Applicant.

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 to the First-tier Tribunal at rpsouthern@justice.gov.uk being 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

