



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

Case Reference : CHI/45UD/LDC/2022/0083

Property : Stocklund House, St. Johns Street,
Chichester, West Sussex PO19 1UP

Applicant : Stocklund House Management Ltd

Representative : Deacon Crickmay Asset Management

Respondents : Flat 21a- Mr I Ritchie
Flat 21b- Mrs S Brown
Flat 21c- Mrs E Graham
Flat 21d- Mr P Hutchinson

Representative : Deacon Crickmay Asset Management

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 Tildesley OBE

**Date and Venue of
Hearing** : Determination on Papers

Date of Decision : 9 November 2022

DECISION

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 30 September 2022.
2. The property was originally mixed use with offices on the upper floors and retail on the ground floor. The top floor has now been converted to residential use with a penthouse added on the roof. The first floor was currently vacant last used as offices. The ground floor comprised three retail units.
3. The Applicant explained that dispensation was sought in respect of works for the supply and fitting of a new door drive and encoder to the lift.
4. The Applicant stated that the works were urgent because an elderly resident was reliant on the lift, which was deemed unreliable by the lift maintenance company, restricting his ability to leave the flat.
5. The Applicant has served Notices of intention to carry out the works on the leaseholders and have had informal discussions with them. The Applicant has obtained a quotation of £1,480 excluding VAT for the works plus £1,000 excluding VAT per annum for a comprehensive service contract.
6. On 18 October 2022 the Tribunal directed the Applicant to serve the application and directions on the Respondents, which the Applicant confirmed that it had done so on 26 October 2022.
7. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 1 November 2022 indicating whether they agreed or disagreed with the Application.
8. On 29 October 2022 the leaseholder of Flat 21d returned the pro-forma indicating his agreement to the Application. The other leaseholders did not respond.

Determination

9. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

10. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
11. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
12. Lord Neuberger in *Daejan* said at paragraph 44

“Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements”.
13. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
14. The Tribunal now turns to the facts. The Tribunal is satisfied that it is necessary to carry out the works as an urgent measure to enable access to the flats. The Tribunal holds that the Applicant could not wait to undertake a full consultation exercise before it carried out the works. The Tribunal observes that no leaseholders have objected to the Application.
15. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

16. **The Tribunal grants an order dispensing with the consultation requirements in respect of the works to the lift pursuant to section 20ZA of the 1985 Act.**
17. The Tribunal directs the Applicant to supply a copy of the decision to the leaseholders and confirm that it has served the decision on them.

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 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.