



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

Case Reference	:	CHI/18UG/LDC/2020/0106
Property	:	Vavasour House, North Embankment, Dartmouth, Devon TQ6 9PW
Applicant	:	Vavasour House (Dartmouth) Management Company Limited
Representative	:	Carrick Johnson Management Services Limited
Respondent	:	P Liberson (Flat 2)
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works
Tribunal Member	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	18 February 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the fitting of 2 new Controllers and the creation of safe working spaces at the top and bottom of the lift.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

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 Act in respect of emergency safety works to the two lifts at Vavasour House.
2. The works are urgent as the lifts are not currently operable in this four-storey building.
3. The Tribunal made Directions on 18 December 2020 indicating that 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).
4. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
6. Ten lessees responded indicating that they agreed with the application and have been removed as Respondents in accordance with paragraph 5 above. One lessee objected and remains as a Respondent.
7. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
8. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

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 matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following
- i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - ii. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
 - vi. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - vii. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
 - viii. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
 - ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

11. Included in the bundle submitted is a letter from Hanover Lifts dated 4 February 2021 explaining that as existing examinations for insurance cannot be undertaken safely alterations are required. The work proposed is the fitting of 2 new Controllers to enable the lifts to be operated at slow speed when on inspection. Further work is then required to provide safe working space at the top and bottom of the lift.
12. Mr Liberson object on the grounds that as he is on the ground floor he does not benefit from and should not have to pay for works to the lift.

Determination

13. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements.
14. Mr Liberson's objection does not raise the type of prejudice considered in the Daejan case referred to above, his objection being whether he should be obliged to contribute to costs for which he receives no benefit.
15. As has been made clear the Tribunal's determination is whether or not the lessees have been prejudiced by not being consulted as required by statute. The Tribunal is not determining whether the costs are reasonable or indeed recoverable under the lease and should Mr Liberson or indeed any lessee who wishes to challenge their liability to pay they may do so by making an application under S.27A of the Landlord and Tenant Act 1985.
16. To satisfy the insurers and to maintain a safe environment for lessees it is necessary for regular inspections of the lifts to be carried out. The evidence submitted is that those inspections cannot be carried out due to the lack of certain safety features protecting those operatives carrying out the task.
17. The Tribunal accepts that the works to the lifts should not be delayed by the need to carry out consultation and in the absence of a relevant objection I am prepared to grant the requested dispensation.
18. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the fitting of 2 new Controllers and the creation of safe working spaces at the top and bottom of the lift.**

19. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
18 February 2021

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 the Regional office which has been dealing with the case. The application must be sent 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