



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

Case Reference : **BIR/17UH/LDC/2022/0003**

Property : **Heathfield Gardens, Buxton, SK17 6TN**

Applicant : **Heathfield (Buxton) Management Limited**

Representative : **Premier Estates Limited**

Respondents 1 : **The leaseholders of Heathfield Gardens**

Type of Application : **An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works.**

Tribunal Members : **Judge C Payne
V Ward BSc Hons FRICS – Regional Surveyor**

Date of Decision : **21 April 2022**

DECISION

Background

- 1) By an application received by the Tribunal on 4 February 2022, the Applicant management company sought urgently dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
- 2) The justification for the application provided by the Applicant was as follows; The lift was out of order and required a new main hydraulics system for it to be restored to working order. The Respondents required the lift to be put back into working order as promptly as possible as it was used by elderly residents to access their properties.
- 3) By Directions dated 23 February 2022, the Applicant was instructed to send to the Tribunal and the Respondents, the following documents:
 - a) A copy of the directions dated 23 February 2022;
 - b) A copy of the application form and the accompanying documents including the statement of case;
 - c) Copies of any invoices and quotations relating to the works;
 - d) Any relevant documents including reports on the works required and specifications etc.
- 4) By the Directions of 18 February 2022, Respondents 1 (the leaseholders of the New Central Building) and also Respondent 2, the Landlord, were instructed, by 11 March 2022, to complete the reply form provided with the Directions, and return it to the Tribunal, with a copy to the Applicant indicating whether:
 - They consented to the application (i.e., agreed to dispensation from full consultation)

or, if they opposed the application (in whole or in part) and the reasons why.
 - Within their application, the Applicant had indicated that they were content with a paper determination. If any Respondent required an oral hearing, they were to indicate accordingly on the reply form.

The Respondents were advised if they failed to return the form, the Tribunal would assume that they did not oppose the dispensation application.

The Submissions of the Parties

The Applicant

- 5) Heathfield Gardens is a purpose-built over 55s development. The residents are elderly and rely on the lift for access to their properties, especially when carrying shopping.
- 6) The lift stopped working on 7 November 2021 and a temporary fix was administered. It then stopped working again on 16th November and could not be repaired. A hydraulics specialist was required and attended to inspect the lift on 24 November 2021.
- 7) On 3 December 2021 a quote was received from Schindler and a comparable quote requested from Curti Lifts.
- 8) On 8 December a Notice of Intention to do Works was sent to all the Respondents, requesting responses by 12 January.
- 9) The Board of the Applicant Resident Management Company were concerned about delay to the lift being fixed and determined to write to the Respondents on 15 December presenting them with the 2 quotes, explaining that they recommended the appointment of Schindler and why that would cost less in the long run and asking for the Respondents to all agree to the appointment and to the Applicant applying for dispensation in order to enable the lift to be fixed as quickly as possible.
- 10) By 24 December all of the Respondents had replied to confirm they were happy to appoint Schindler and for an application for dispensation to be made so that the lift could be fixed as soon as possible.
- 11) On 29 December 2021, Schindler were instructed. The works took place on 20 January 2022. A further issue was discovered on 20 January 2022 but the contractor fixed that within the fixed cost as a gesture of goodwill as the Respondents had already suffered some delay. The works were completed on 28 January 2022.

The Respondents.

- 12) Owners of three flats had completed the Reply Forms to the effect that they supported the application for full dispensation. The Tribunal received no objections to the application and there were no requests for an oral hearing.

Hearing and Inspection

- 13) As there have not been any requests for an oral hearing and the Tribunal does not consider there is any necessity for the same, the Tribunal has determined this matter on the basis of the written submissions of the parties and without an inspection of the Property.

The Lease

- 14) The application before the Tribunal relates only to the requested dispensation from the statutory consultation regime in the Act as interpreted by the courts (see below).

The Law

- 15) Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the consultation procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a leaseholder has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as ‘works to a building or any other premises’) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual leaseholder in excess of £250.00.
- 16) Essentially, there are three stages in the consultation procedure, the pre-tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and, in some cases, a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.
- 17) In *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”), the Supreme Court noted the following:
 - a) Prejudice to the tenants from the landlord’s breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20ZA (1).
 - b) The financial consequences to the landlord of not granting dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

- d) 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 tenant. It is not appropriate to infer prejudice from a serious failure to consult.
 - e) 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.
 - f) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - g) Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). 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.
 - h) In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
 - i) The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
 - j) 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).
- 18) For the sake of completeness, it may be added that the Tribunal's dispensatory power under section 20ZA of the Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

The Tribunal's Determination

- 19) It is clear to the Tribunal from the submissions made that works were required to fix the lift and that there would be a benefit to having such works done as quickly as possible.

- 20) The Applicant did serve a Notice of Intention and, while the remainder of the consultation process did not take place, the Respondents were provided with two quotes and an explanation of why one contractor was preferred in the letter of 15 December 2021. The Respondents were also all given the opportunity to approve the appointment of the contractor and agree to an application for dispensation being made before the contractor was engaged and the works took place.
- 21) The Tribunal cannot identify any prejudice (as defined by *Daejan*) that the Respondents may suffer as a result of the failure to consult, nor have any Respondents made any submissions to that effect. The extent, quality and cost of the works were in no way affected by the failure to carry out the full consultation.
- 22) Accordingly, the Tribunal determines that, on the evidence provided, it is reasonable to dispense with the further consultation requirements of section 20 of the Act. The requested dispensation is, therefore, granted.
- 23) Parties should note that this determination does not prevent any later challenge by any of the Respondent leaseholders under sections 19 and 27(A) of the Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.

Appeal

- 24) A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge C Payne