



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

**Case Reference** : CHI/00ML/LDC/2022/0091

**Property** : 140 Marine Parade, Brighton, BN2 1DF

**Applicant** : 140 Marine Parade (Brighton) Limited

**Representative** : Jonathan Rolls Property & Estate  
Management

**Respondent** :

**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** : Judge D Whitney

**Date of Decision** : 28 November 2022

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**Decision**

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## 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 1985 Act. The application was received on 14 October 2022.
2. The property is described as a 6 storey Regency building on Brighton seafront built c.1850 which has been converted into 5 flats.
3. The Applicant explains that *“The lift at 140 Marine Parade has been out of action since May 2022. Otis the lift maintenance company have attempted a number of repairs which have been unsuccessful. They have only now informed us that a repair is not possible and that a new controller unit is required for the lift. The costs of the new controller unit require the serving of S20 notices. Instructions have been given to an alternate lift company to proceed with the works which are expected to commence in approximately 6-8 weeks.”*
4. And further *“Dispensation is sought to enable works to commence as soon as the lift company can proceed due to the difficulties residents are having in using the stairs to access their homes. One flat has family with baby and pram; another has older man with hip problems about to have hip surgery; another has a person with a recent arm fracture”.*
5. The Applicants confirms that an initial S20 notice of intention has been issued. Two quotes have been obtained and circulated to leaseholders.
6. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

## **DETERMINATION**

### **The Law**

7. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 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.
8. 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”.
9. 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.
10. 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”.
11. 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).
12. 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.”
13. 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.

14. 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.
15. If dispensation is granted, that may be on terms.
16. 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**

17. No leaseholder has objected.
18. I have had sight of the First Stage Notice and two quotations obtained (Southern Counties Lift Services Ltd and Sussex Lift Company). I am satisfied relying upon the information within the application that the works are urgently required. The application explains how residents of the flats are affected by the lift not working. I am satisfied that it is appropriate to dispense with compliance with the consultation process in the particular circumstances of this case.
19. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so.
20. I grant dispensation pursuant to Section 20ZA of the Landlord and Tenant Act 1985 from consultation.
21. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.

### **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)
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.