



12347

**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/22UN/LDC/2017/0015

Property : Regency Lodge,
Elmden Court,
Clacton-on-Sea,
CO15 3TY

Applicant : Hanover Housing

Respondents : The long leaseholders set out in the
application

Date of Application : 15th August 2017

Type of Application : for permission to dispense with
consultation requirements in respect of
qualifying works (Section 20ZA Landlord
and Tenant Act 1985 (“the 1985 Act”))

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to repair the lift serving the property.

Reasons

Introduction

2. This application was made for dispensation from the consultation requirements in respect of ‘qualifying works’ to the lift serving the building in which the properties are situated which had broken down and could not be used. It had been breaking down fairly often but the week before the application was made, it stopped working altogether.
3. The property is a purpose built block of 37 flats over 3 floors with elderly residents. Several quotations have been obtained to undertake repair work.
4. The Tribunal chair issued a directions order on the 21st August 2017 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 6th September 2017 taking into account any written representations made by the parties. It was made

clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 1st September. None were received by the Tribunal.

The Law

5. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the management company's proposals. Those proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the management company must give its response to those observations.
6. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

Conclusions

7. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
8. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, the lift had ceased working and needed urgent repair.
9. It is self-evident that repair works were and are required. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted. It is hoped that the repair works are under way or have been finished. This is obviously an urgent matter and the Tribunal was somewhat concerned to see that the faults were mentioned in a newsletter to residents dated 13th July 2017 when it was said that an independent consultant would be inspecting on the 19th July. With elderly residents, some of whom are in wheelchairs, the delay in progressing the works is unfortunate bearing in mind the **Deajan** case mentioned above.
10. If there is any subsequent application by a Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that

Tribunal will want to have clear evidence of any comparable cost and availability of the necessary parts at the time of the repairs.

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Bruce Edgington
Regional Judge
8th September 2017

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.