

11593



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

Case reference : CHI/18UG/LDC/2016/0039

Property : Bridge Terrace, The Plains, Totnes TQ9
5DL

Applicant : Oaklawn Court (Torquay) Ltd

**Applicant's
Representative** : Bridge Terrace Management Company
Limited

Respondents : The Leaseholders

Tribunal member : Mr D Banfield FRICS

Date of Directions : 26 October 2016

Summary of decision

**The Tribunal grants dispensation of all or any of the
consultation requirements of S.20 Landlord and Tenant Act
1985.**

**The Tribunal makes no determination as to whether any service
charge costs are reasonable or payable.**

Background

1. This is an application dated 2 September 2016 for dispensation from the consultation requirements provided by Section 20 Landlord and Tenant Act 1985. (the Act)
2. The Applicant advises that the main 8 person lift has broken down and that a number of occupiers of the upper floor flats rely on the lift for access to their properties.
3. Leaseholders were notified of a failure of the lift, that costs were likely to exceed £250 and that an application to the Tribunal was to be made.
4. The work has now been carried out at a cost of £7,053.60 and dispensation from the consultation requirements is sought.
5. The Tribunal made Directions on 15 September 2016 requiring the Applicant to send copies to each Respondent and to confirm to the Tribunal that it had done so. The Directions provided a form for Lessees to state whether they objected to the proposals and if so whether they wished for the matter to be determined at an oral hearing.
6. The Directions also indicated that in making its determination the Tribunal would rely on the application and accompanying documents, the lease, the Directions and on any other documents upon which the Applicant wished to rely.
7. The Applicant has confirmed that copies of the Application and the Tribunal's Directions have been circulated to all Leaseholders. No objections have been received.
8. The Applicant also confirmed to the Tribunal that it did not propose to submit any further documents and was content for the Tribunal to make its determination on the papers already submitted.
9. As there have been no requests for an oral hearing the Tribunal has made its determination on the information contained in the papers already received.
10. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

11. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) 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.

12. 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

- The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- 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.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- 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).
- 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.
- 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.
- 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.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

13. In their Application form the Applicants describe the events leading to their decision to arrange for repairs to be carried out to the lift at a cost of £7,053.60.
14. No supporting evidence such as an Engineer's report, contractor's estimate or contractor's invoice was submitted with the application and despite having the opportunity to provide further documentation the Applicant has chosen not to do so.

Decision

15. 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 the requirements.
16. For the Tribunal to be so satisfied it expects to see evidence upon which to make its determination.
17. In this application no evidence as such has been provided and the Tribunal is left to make its determination solely on the statement of the Applicant.
18. The Tribunal takes comfort in that the Application is supported by a signed statement of truth and that none of the Lessees have objected to the application.
- 19. The Tribunal therefore grants dispensation of all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985.**
- 20. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
26 October 2016

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 arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. 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.

3. 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.