



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/ ooHH/LDC/2019/0069

Property : Holme Court, Lower Warberry Road,
Torquay, Devon TQ1 1QR

Applicant : Holme Court (Torquay) Association Limited

Representative : Carrick Johnson Management Services
Limited

Respondent : The long lessees

Representative : -

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Judge E Morrison

Date of Decision : 1 October 2019

The Tribunal grants dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 for refurbishment works to 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 (“the Act”) from the consultation requirements imposed on the landlord by Section 20 of the Act in respect of refurbishment works to the lift at the property which services 30 flats over 8 floors, the lift having failed earlier than expected on 3 August 2019.
2. The Tribunal made Directions on 10 September 2019 requiring the Applicant to serve a copy of the application and the Directions on each of the lessees. Included with the Directions was a form for the lessees to complete indicating whether they agreed with or objected to the application. The Directions also noted that lessees who agreed with the application or did not return the form would be removed as Respondents.
3. 23 of the 30 lessees responded to the application confirming that they agreed with the application, and none responded with an objection. The Applicant produced a document pre-dating the application containing the written consent of all 30 lessees to the application.
4. There were no requests for an oral hearing and the application is therefore determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules.
5. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

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

20ZA Consultation requirements: supplementary
(1) Where an application is made to the appropriate 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.
7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
 - a. 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.
 - b. 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.

- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. 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).
- f. 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.
- g. 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.
- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

8. The Applicant explains that prior to the lift failing, lift modernisation works had been contemplated for some time and the lessees had been informed of this. When the lift failed earlier than expected it transpired that a major component could not be sourced as it was obsolete so a full refurbishment was required. Many elderly residents are reliant on the lift, which is not working.
9. The leases place an obligation on the lessor to maintain the lift, and the cost to be recoverable through the service charge.

Determination

10. The Tribunal is satisfied that works to the lift should be commenced as soon as possible without the inevitable delay of carrying out a full Section 20 consultation. No objection has been received from any of the lessees and no evidence of the type of prejudice referred to in paragraph 7 above has been identified.
11. In accordance with the above the Tribunal grants dispensation from the consultation requirements of section 20 for the refurbishment of the lift.

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

Judge E Morrison

1 October 2019

Appeals

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 appeal is seeking.