FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/21UD/LDC/2019/0022**
Property	**:**	**Greenhayes, 46 Springfield Road, St Leonards On Sea, East Sussex, TN38 0TZ**
Applicant	**:**	**Blockport Ltd**
Representative	**:**	**FPE Management Ltd**
Respondent	**:**	**The Lessees**
Representative	**:**	**In person**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	**:**	**Judge I Mohabir** **Mr P D Turner-Powell FRICS**
Date and venue of determination	**:**	**30 April 2019** **Royal Victoria Hotel, St Leonards On Sea**
Date of decision	**:**	**3 May 2019**

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. Greenhayes, 46 Springfield Road, St Leonards On Sea, East Sussex, TN38 0TZ ("the property") is a purpose built block comprised of 16 flats. The Respondents all hold long residential leases in respect of each flat. The Applicant is the freeholder who has instructed FPE Management Ltd ("FPE") to manage the building on its behalf.

3. It is assumed that all of the residential leases were granted in the same terms as the specimen lease of Flat 14 provided to the Tribunal dated 3 August 1990 ("the lease"). By clause 5(2) of the lease, the Applicant is obliged to repair and maintain those parts of the building, which are not demised under the residential leases including the common parts.

4. The First Schedule in the lease sets out the demised premises, which includes the entrance door to each flat.

5. On or about 20 February 2019, the Applicant instructed Pyroporte Ltd to carry out a fire safety inspection of the front doors to the 16 flats as well as the 6 internal fire safety doors found in the common parts of the building. The resulting report concluded that there are a number of safety deficiencies with all of the doors.

6. As a consequence, on behalf of the Applicant, FPE served a Notice of Intention on the Respondents dated 15 March 2019 proposing to replace all of the fire doors in and leading to the communal hallways with 30 minute compliant fire doors as required by The Regulatory Reform (Fire Safety) Order 2005 ("the order").

7. Subsequently, the Applicant made this application dated 15 March 2019 seeking dispensation from the statutory requirement to consult the Respondents in relation to the proposed works.

8. On 24 August 2018, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. Virtually all of the Respondents oppose the application.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. The hearing took place on 30 April 2019 following the Tribunal's inspection of the front door of Flat 10 and the adjacent communal fire door on the same floor.

11. The Applicant was represented by Mrs Francis from FPE. In total, 5 lessees attended in person. Mr Dixon appeared as the lay representative for Mrs Saunders, the lessee of Flat 4.

12. The Applicant's primary case was that it is the "responsible person" within the meaning of the order and pursuant to paragraph 17 in Part 2 of the order, it has a statutory duty to ensure that the premises and any facilities, equipment and facilities provided are maintained in an efficient state, in efficient working order and in good repair. Therefore, based on the findings in the Pyroporte report, it is obliged to carry out the replacement of the front door to the flats along with the communal fire doors.

13. The Respondents oppose the application for three main reasons. Firstly, they assert that all of the front doors of the flats already afford 60 minute fire protection as they have a FD60 fire rating. Secondly, the obligation imposed by the order is not retrospective and only applies to flats currently being constructed. Thirdly, they complained that the requirement to replace the fire doors generally was being imposed on them without the Applicant providing adequate time or information for a proper consideration to be made by them.

14. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

15. The issue before the Tribunal was whether dispensation should be granted in relation to the proposed replacement of the flat front doors and the communal fire doors. It should be noted that the Tribunal is not concerned about the cost that may be incurred, as that is not within the scope of this application. The burden of proof is on the Applicant to satisfy the Tribunal on a balance of probabilities that it is reasonable to grant dispensation.

16. Having carefully considered the available evidence, the Tribunal dismissed the application the following reasons:

    (a) Mrs Francis, for the Applicant, conceded that there was no particular urgency for the application. When asked by the Tribunal, she said that her client had "panicked". She also appeared to accept that the consultation process could have largely been completed by the time the hearing took place.

    (b) importantly, the Tribunal found that the Applicant's reliance on the statutory duty imposed by the order is misconceived. The Order is designed to provide a minimum fire safety standard in all non-domestic premises with a few exceptions. The Order

applies to almost all buildings, places and structures other than individual private homes, namely, individual flats in a block or family homes. The Tribunal, therefore, did not accept Mrs Francis' submission that the common areas leading to the flat front doors could be regarded as a "workplace" within the meaning of the Health and Safety Act 1974. In any event, she was unable to support the submission by reference to any particular provision within the 1974 Act.

(c) It follows, that the Applicant cannot be the "responsible person" within the meaning of the order. If it is not, then there is no statutory duty imposed on it under paragraph 17 of the order in relation to fire safety precautions it should take regarding the building. If so, there is no statutory requirement under section 20 of the Act to consult the Respondents at all in relation to the proposed works.

17. It should be noted that the Tribunal's findings above about the Applicant's duty (or absence) to carry out fire safety precautions and/or works is limited to the order under which this application is brought. It may well be that other statutory duties are imposed on the Applicant in relation to fire safety for the building and it should seek independent legal or other advice about these matters separately.

Name: Tribunal Judge I Mohabir **Date:** 3 May 2019

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.