FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HG/LDC/2020/0098
Property	**:**	16-20 North Street, Plymouth, Devon, PL4 8DL
Applicant	**:**	Sixteen Management Limited
Representative	**:**	Plymouth Block Management
Respondents	**:**	(1) Q Dime Limited (2) 23 Leaseholders
Representative	**:**	(1) Allsquare Limited
Type of Application	**:**	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	**:**	Judge Tildesley OBE
Date and Venue of Hearing	**:**	Determination on Papers
Date of Decision	**:**	29 December 2020

DECISION

© CROWN COPYRIGHT

The Application

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.

2. The Applicant explains that the existing fire alarm system had failed and needed to be replaced urgently to ensure the building remained safe under fire regulations and meets the obligations of its insurance policy. The major works were the installation of a replacement fire alarm system. The application stated that there was an inability to repair the current system due to its age and use of now obsolete components. It was further said that the position had been discussed with the Applicant's Directors who have agreed to proceed immediately with the installation of the new fire alarm and to seek this dispensation from any further consultation.

3. The Application for dispensation was received on 1 December 2020.

4. On 3 December 2020 the Tribunal decided that the matter was urgent, it was not practicable for there to be a hearing and it was in the interests of justice to make a decision disposing of the proceedings without a hearing (rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).

5. The Tribunal directed the Applicant to serve the application and directions on the leaseholders which was done on 4 December 2020.

6. The Tribunal required the leaseholders to return a pro-forma to the Tribunal and to the Applicant by 11 December 2020 indicating whether they agreed or disagreed with the application. The Applicant was given a right of reply by 15 December 2020.

7. Three leaseholders returned the pro-forma. Ms Collis of Flats 12 and 20, and Mr Monsen of Flat 16 agreed with the Application. Mr Lovesey of Flat 5 objected to the Application.

.

Determination

8. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

9. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

10. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

11. Lord Neuberger in *Daejan* said at paragraph 44

> "Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements".

12. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

13. The Tribunal now turns to the facts. In June 2019 the maintenance contractors informed the Applicant that the fire alarm system at the property required replacement because it was not possible to obtain parts for the alarm system which was now obsolete. At its AGM on 19 June 2019 the Applicant decided that as the alarm system was still functional it should await the outcome of the Grenfell Enquiry in case there were any changes to fire safety legislation. The AGM recorded that costs of the works would be around £10,000, which could be paid for from the reserves. The Tribunal understands that quotations from

three contractors had obtained by the Applicant for the proposed works.

14. At their August 2020 meeting the Applicant's directors decided to commence consultation on the replacement of the fire alarm system in early 2021 because they could no longer await the recommendations of the Grenfell Tower enquiry which were not expected to be published until 2022.

15. In early November 2020 the fire alarm system experienced several minor faults and with the onset of Christmas when it was expected that the building would have the highest levels of occupancy the Directors and the Managing Agent decided to replace the fire alarm system with immediate effect, particularly as the works could be paid for from reserves.

16. On 20 November 2020 the Applicant notified the leaseholders of the replacement of the fire alarm system. The Applicant had obtained updated quotations from two of the companies which were the most competitive when the original quotations were sourced in 2019. The cost of the replacement was £5,895 plus VAT (£7,074) which would leave a balance of £8,034.48 in the reserves. The contractors provided a guarantee of 24 months which would be supported by an annual maintenance contract. The Tribunal understands that the works were completed on 16 December 2020.

17. The Tribunal received representations from three leaseholders, two of whom agreed with the application. Mr Lovesey of Flat 5 objected to the application and to it being dealt with on the papers.

18. The Tribunal had given all leaseholders prior notice that this application would be dealt with as matter of urgency without a hearing under the powers introduced following the Coronavirus Pandemic. The Tribunal having considered Mr Lovesey's representations is not persuaded that it is necessary to hold a hearing to determine the application.

19. Mr Lovesey's principal objection to the Application was that the Applicant was aware for a significant period of time that the fire alarm system was obsolete and likely to fail and that the Applicant should have embarked on a consultation exercise when the problem was first identified. Mr Lovesey pointed out that he had effectively been denied his statutory right of consultation by the very tight timescales.

20. On 9 December 2020 Mr Lovesey had submitted questions of the managing agent about the works to the fire alarm system to which he had received a response on 11 December 2020.

21. The Tribunal is not convinced that Mr Lovesey has suffered relevant prejudice by the failure to consult. Mr Lovesey made no suggestions that the works were inappropriate or too expensive. The Tribunal

acknowledges that Mr Lovesey might argue that he had insufficient time to investigate those matters. The Tribunal, however, notes that all leaseholders were aware from the minutes of the AGM on 19 June 2019 that the fire alarm system required replacement and that the costs of the replacement would be in the region of £10,000 which would be funded from reserves. Mr and Mrs Lovesey were present at the meeting. The Tribunal understands that Mr Lovesey's parents act as his representative in his dealings with the managing agent. His father, Mr Simon Lovesey, is his representative in these proceedings before the Tribunal.

22. The Tribunal is, therefore, satisfied that Mr Lovesey had not been taken by surprise by the carrying out of the works and that although he had not been given the formal opportunity to comment on the works he knew about them and the likely costs since June 2019.

23. The Tribunal finds that the Applicant had taken steps to mitigate any prejudice likely to be caused by a failure to consult. The Applicant had obtained three quotations for the replacement of the fire alarm and the cost of those works of £7,074 (£307.56 for each leaseholder) was lower than the original estimate of £10,000. Further the Applicant had satisfied itself that it was not possible to repair the fire alarm system because it was now obsolete and not possible to obtain parts. Finally the Applicant had secured a guarantee of 24 months from the contractor which should ensure that the works are to a reasonable standard. Given those circumstances the Tribunal finds it difficult to envisage what Mr Lovesey would have said if he had been given the opportunity to consult. The Tribunal also notes that no other leaseholder had objected to the application.

24. The Tribunal is, therefore, satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

25. **The Tribunal, therefore, dispenses with the consultation requirements in respect of the replacement of the fire alarm system.**

26. Mr Lovesey requests that he should not be liable to contribute to the costs of these proceedings through the service charge. Mr Lovesey pointed out that the Applicant had broken the rules by the failure to consult, and that, in his view, there would have been sufficient time for the leaseholders to be invited to a virtual meeting to discuss the replacement of a functioning alarm; and be sent a report on the test that was carried out in June 2020 and the proposed way forward.

27. The Tribunal acknowledges that an order for dispensation can be characterised as an indulgence from the Tribunal to the landlord at the expense of the leaseholders, and that consideration should be given for an order that the landlord pay the costs of its application for dispensation. The Tribunal, however, does not consider in the circumstances of the case that it is just and equitable for an order to be

made preventing the landlord from recovering its costs through the service charge. The landlord in this case is a right to manage company. No other leaseholder objected to the application. All leaseholders were aware or should have been aware of the need to replace the fire alarm system and the likely costs. Finally the course of action proposed by Mr Lovesey would have resulted in greater costs being incurred by the landlord and potentially the leaseholders.

28. The Tribunal will advise Ms Collis, Mr Monsen and Mr Lovesey of the decision. The Tribunal directs the Applicant to inform the remaining leaseholders and the freeholder of the Tribunal's decision and to display the written decision on a noticeboard in the common areas.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

4. 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.

Due to the Covid 19 pandemic, communications to the Tribunal MUST be made by email to rpsouthern@iustice.gov.uk. All communications must clearly state the Case Number and address of the premises.