FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/19UJ/LDC/2021/0117
Property	**:**	Ryan Court, Grosvenor Rd, Weymouth, Dorset, DT4 7QL
Applicant	**:**	Proxima GR Properties Limited
Representative	**:**	Millstream Management Services Limited
Respondent	**:**	
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	**:**	D Banfield FRICS Regional Surveyor
Date of Decision	**:**	17 January 2022 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.

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to return the lift to working order.

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

The Applicant is to send a copy of this decision to the lessees

Background

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 this is a purpose built 3 storey block of 18 retirement apartments. The lift is out of service until remedial/renewal works are completed and a number of owners are housebound until resolved.

3. The Tribunal made Directions on 29 December 2021 indicating that the Tribunal is satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is 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.

4. The Tribunal required the Applicant to send to the Lessees the Tribunal's Directions, a copy of the Application and a form for the Lessees to complete indicating whether they agreed with or objected to the application. It was indicated that those Lessees who agreed with the application or failed to respond would be removed as Respondents.

5. No responses were received, and the lessees are therefore removed as respondents as indicated above.

6. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were given that no objections had been received.

7. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

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

> S.20 ZA Consultation requirements:
>
> 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.

9. 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;

i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

ii. 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.

iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

v. 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).

vi. 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.

vii. 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.

viii. 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.

ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

10. There being no objections no further information was required of the Applicant above that already submitted with the application.

Decision

11. 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 those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.

12. Clearly the works to rectify faults to the lift should not be unduly delayed by the time taken to follow the consultation procedures laid down and no lessee has objected to the application.

13. In view of the above **the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to return the lift to working order.**

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

15. **The Applicant is to send a copy of this decision to the lessees**

D Banfield FRICS
17 January 2022

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.