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

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| **Case Reference** | **:** | CHI/00HH/LDC/2022/0014 |
| **Property** | **:** | Lynway Court, St Marychurch Road, Torquay, Devon, TQ1 3JF |
| **Applicant** | **:** | Lynway Court RTM Company LTD |
| **Representative** | **:** | Crown Property Management |
| **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<br>Regional Surveyor |
| **Date of Decision** | **:** | 17 March 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. |

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**DECISION**

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**The Tribunal grants dispensation from the remaining consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the replacement of the lift control panel.**

**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 each lessee.**

## 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. The application was made on 9 February 2022.

2. The Applicant confirms that Lynway Court is a purpose-built privately-owned block of 33 flats comprising of ground, first and second floors with a lift.

3. The Applicant explains that the lift has been out of service since January 2022. The diagnoses from the lift service company is that the control panel needs to be replaced. To date two quotes have been obtained and the board has instructed their lift service contractor, Eurolifts LTD, who provided the cheaper of the two quotes to speed up reinstating the lift.

4. A Section 20 Stage one Notice was issued on 27 January 2022 with no observations received as at the date of the application. A Section 20 Stage two Notice will be issued on 8 March 2022.

5. Dispensation is sought to assist residents and the emergency services in gaining access to and from the flats.

6. The Tribunal made Directions on 21 February 2022 indicating that it was 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.

7. The Tribunal required the Applicant to serve the Directions and a copy of the application on each of the Respondents together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application. It was indicated that those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents. The Applicant confirmed on 22 February 2022 that the Tribunal's Directions had been served.

8. 30 Lessees responded all of whom were in agreement with the application. As indicated above those agreeing and those not replying have been removed as Respondents.

9. 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 the only objection gave no reasons in support.

10. 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**

11. 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.

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

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**

13. In the absence of any reasoned objections the Applicant was not required to serve further evidence than that already referred to at paragraph 3 above.

**Determination**

14. 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.

15. The Tribunal accepts that these were works were urgent and could not wait while the full consultation procedures were conducted. re

16. Competitive quotations were obtained, and Lessees were informed through the service of a Stage 1 Notice. No lessee has submitted an objection, and no prejudice has been identified as referred to in the Daejan case above.

17. For these reasons I accept that dispensation should be granted.

18. **The Tribunal therefore grants dispensation from the remaining consultation requirements of S.20 of the Landlord and Tenant Act 1985 in respect of the replacement of the lift control panel.**

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

20. **The Applicant is to send a copy of this decision to each lessee.**

D Banfield FRICS
16 March 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.