



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

Case Reference : CHI/00HX/LDC/2018/0096

Property : David Murray John Tower
Canal Walk
Swindon
Wilts
SN1 1LP

Applicant : Swindon Borough Council

Representative : Mr D Bigwood

Respondents : Carl Vernon Montgomery,
Sharanjit Singh,
Ruchir Saraswat
and Margaret Biddiscombe

Representative : None

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

Tribunal Member(s) : Mr I R Perry FRICS
Mr S J Hodges FRICS

Date of Decision : 21st January 2019

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the lifts.

Background

1. This is an application for dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in respect of the replacement of parts of the lift mechanism as detailed in proposal KITCHEKO11676 from Stannah Lift Services Limited on 7th November 2018.
2. The Applicant owns the freehold estate of land located on Canal Walk, Swindon on which The David Murray John Building (the Building) is situated.
3. The Building is 21 storeys high and is split between commercial units on the lower levels served by two lifts and residential units on the higher levels served exclusively by two other lifts. Thirteen of the residential flats are privately owned and the remainder are rented out by the Council.
4. One of the residential lifts is designated and programmed for use by the Fire Service in case of emergency. If a fire occurs this lift returns to the trucking/loading deck within the shopping centre and can then be controlled by the Fire Service to take equipment to upper levels as necessary. The control panel to this lift has failed completely and spare parts are no longer available to effect running repairs.
5. The project is urgent to remove the risk of the lifts failing. There is now only one lift operating in the residential block and residents with limited mobility could be adversely affected. In addition the lift that has failed is the designated lift for use by the Fire Service in case of emergency thus compromising the safety of the entire residential block.
6. Pending a permanent repair to the lift the Fire Service have deployed additional equipment to upper stories of the block and are on standby to deploy six vehicles to any alarm rather than the normal two vehicles.
7. If the second lift were to fail then residents on the upper levels would be seriously disadvantaged. The lifts are the subject of a maintenance contract with Stannah who has submitted a proposal to supply new control panels and carry out ancillary works to both residential lifts at a cost of £58,670.00 excluding VAT.
8. The second lift failed in early December 2018 but Stannah was able to effect a temporary repair by using parts from lifts in the commercial part of the building.
9. The Tribunal made Directions on 22nd November 2018 which were sent to the parties. The application for the dispensation and the Tribunal directions were displayed on the notice board in the hall to the residential

part of the building as evidenced by a photograph supplied by the Applicant.

10. The Respondents were invited to complete a form and return it to the Tribunal indicating whether they agreed or objected to the application, whether they wished to remain as Respondents and whether an oral hearing was required.
11. The Lessees were advised that if they agreed to the application or did not return the form they would be not remain as Respondents.
12. Responses were received from a number of Lessees who agreed with the application but wished to remain as a Respondent. Mrs M Biddiscombe of Flat 41 did not agree with the application and requested that a hearing be held to consider the application.
13. Accordingly a hearing was arranged for Monday 21st January 2019 which was preceded by a brief inspection of the property. Mrs Biddiscombe attended the inspection as did Mr K Hooker, Mr D Newman, Ms V Lodge, Mr D Bigwood and Ms K Bannon representing the Council.
14. In the original application the Council had stated that a 's20 consultation has not commenced in regards to these emergency works'. In preparation for the Hearing the Council realised that this was an error and they submitted a second application form in which they stated that 'The first stage of s20 consultation has been carried out in relation to significant upgrades to the lift control system at the David Murray John Tower. The consultation period was due to end on the 22nd November 2018. No objections were received.' That is to say the works proposed as part of this s20ZA application were included in a s20 consultation that was in progress
15. The only issue for the Tribunal is if 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

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

20ZA Consultation requirements:

- a. (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.
17. 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
 - 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

18. A Hearing was held at 12.15 pm on Monday 21st January 2019 at the Double Tree Hotel, Lydiard Fields, Swindon.
19. Mr Bigwood outlined the case for the Applicants explaining that this matter had originated in October 2018. A consultation for more extensive works was in progress and Stannah was undertaking some work on the lifts in order to keep them operational until the consultation period had expired and a full contract for repair could be implemented.
20. The second lift had broken down on 7th December 2018 the works were regarded as most urgent. The proposal from Stannah was accepted and the s20ZA application was made to dispense with the consultation period for the lift repairs.
21. The Council had carried out a 'soft marketing exercise' to consider whether the price within the proposal was reasonable. This involved the relevant

officers in the Council considering whether the price of the works within the overall contract, which would be for about £150,000, was reasonable. They reached the conclusion that the price was reasonable and instructed Stannah to undertake the works to the lifts which included a delay of some nine weeks for parts to be specifically manufactured.

22. Mrs Biddiscombe had written to the Tribunal on 9th December 2018 outlining her objection to the application. She had been unaware of the original consultation meetings held on 23rd and 24th November 2018 and had not seen any notices on the notice board within the property.
23. She thought that the Council should have foreseen these issues and asked why there was no Sinking Fund in place for the management of the property. Mr Bigwood explained that there was no provision in the lease for a Sinking Fund and these catastrophic failures of the lift controls had not been foreseen by the specialist lift contractors.
24. Mrs Biddiscombe had also thought that works had been started on the replacement before the original consultation period had expired. Mr Hooker explained that Stannah had been on site attempting temporary repairs. She also questioned the amount of consultation normally given between the Council and the individual flat owners over the long term management of the property. Mr Bigwood registered his disappointment that Mrs Biddiscombe felt that this was the case.
25. Finally Mrs Biddiscombe accepted that the works did need to be carried out and having heard the evidence she did not feel that she had been prejudiced or disadvantaged in any way.

Determination

26. 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 the requirements.
27. The Tribunal decided that these works were of the utmost urgency and that the Council had acted properly in instructing the works to be carried out as quickly as possible.

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the lifts as detailed in the proposal KITCHKO11676 dated 7th November 2018

28. In granting dispensation in respect of part of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

I R Perry FRICS
21st January 2019

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.