



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

**Case reference** : **MAN/00CB/LDC/2020/025**

**Property** : **Portland Court, Wellington Road,  
Wallasey, H45 2 NH**

**Applicant** : **Portland Court Management Company  
Ltd**

**Representative** :

**Respondent** : **Sam Davies-Veryerd Flat H Portland  
Court Wellington Road, Wallasey, CH45  
2NQ**

**Representative** :

**Type of application** : **Dispensation with Consultation  
Requirements under section 20ZA  
Landlord and Tenant Act 1985.**

**Tribunal  
member(s)** : **Judge J White  
Ms S D Latham (valuer)**

**Venue** : **Northern Residential Property First-tier  
Tribunal, 1 floor, Piccadilly Exchange, 2  
Piccadilly Plaza, Manchester, M1 4AH**

**Date of decision** : **26 August 2020**

**DECISION**

## **The Decision**

- (i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 to remove asbestos to the lift motor room as set out in the quote from the company “act” [336].
- (ii) **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **The Background**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Property is a 1930’s purpose-built block containing 78 flats. It has a boiler, pump room, lift motor room and a large number of riser cupboards. The works in this Application concern damaged asbestos in the lift motor room which contains all the controls for the lift. Until the works are complete the Applicant will not be able to gain access to the lift motor room.
3. Further works are proposed to remove damaged asbestos from other rooms in the block. At the time of the Application, those further works are part of a consultation process.
4. Dispensation is sought to removing asbestos from the lift room due to ensuring that any maintenance works can be carried out to the lift controls. It is important that the lift remains in working order due to the number of older residents in the Property.
5. On 5 June 2020, the Tribunal issued Directions. In accordance with those directions the Applicant submitted a bundle of documents to the Tribunal.
6. Attached to the directions was a form for the Leaseholder to indicate whether they agreed with or objected to the application. Only those Leaseholders who submitted a response would be added as a Respondent to this Application, though the Applicant must display this Decision on a prominent place on its website.
7. On 10 June 2020 the Applicant wrote to the leaseholders in accordance with those directions [362]. On the 15th of June 2020 Sam Davies-Verwerd from flat H Portland Court sent a reply form stating that they object to the application . They state that they sent a statement to the landlord. The statement, in an email, says “I object

to any raising of my maintenance charges which are already extortionate in excess of £2000 per annum” [364-366].

8. No objections or submissions were received from any other Leaseholder.
9. The Directions stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected. The Tribunal convened on 26 August 2020 without the parties to determine the application. It decided that there was enough evidence to determine the application without the need for an inspection or oral hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective.

### **The Evidence**

10. The Applicant relies on the Lease, Asbestos survey, Notice of Intention for the Asbestos Project Dated 24th of April 2020 [334], lift motor Room works Quotes, Asbestos Works Completion Certificate dated 2 June 2020.
11. There are two quotes for the lift motor room initial work. The first one from “act” for £7000 plus £1400 VAT totalling £8400 [336] the second quote is from Bradley Environmental for £17,496 pounds [346-348].
12. The asbestos survey is dated 16th of April 2020 carried out by Bradley Environmental [6-332]. This is a survey and schedule for whole project.

### **The Law**

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

20ZA Consultation requirements:

(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.

14. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson et al* [2013] UKSC 14. 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 (1) 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 noncompliance 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.

### **The Determination**

- 15. The works proposed are clearly Qualifying Works triggering consultation requirements in accordance with S20ZA (2) of the Act. The amount exceeds £250 for any qualifying tenant as set out in the Lease.
- 16. 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.
- 17. Though one leaseholder has objected to the application no prejudice in relation to the dispensation requirements has been set out. The Respondent is concerned about the service charges increasing. The reasonableness of any service charges may be raised at any time by a

leaseholder in a sperate application. This application concerns whether it is reasonable to dispense with the consultation requirement to remove asbestos in the lift motor room.

18. No prejudice, as referred to in the *Daejan* case above, has been identified. It is reasonable to dispense with the requirements. The works are urgent, any delay is likely to result in the Applicant being unable to undertake any emergency repairs or maintenance to the lift. This would leave residents, who are unable to, or find it difficult to use the stairs, at risk of not being able to leave the Property. It also places residents at risk of lift failure as no routine maintenance or inspection can be undertaken without removal of asbestos in the lift motor room. The Applicant has started the consultation process in relation to the more extensive asbestos removal project as identified in the survey report. They have limited the application to urgent works only, thereby giving the tenants an opportunity to make any objection to the nature, extent, and cost of the more extensive work. The Applicant states that they will use the lowest quote.
19. For the reasons set out above the Tribunal grants dispensation from the consultation requirements of S.20 the Act in respect of the work to remove asbestos to the lift motor room as set out in the quote from act [336].
20. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

**Judge J White**  
**8 September 2020**

### ***RIGHTS OF APPEAL***

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.