



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

Case Reference : CHI/29UN/LDC/2019/0097

Property : Arlington House, All Saints Avenue,
Margate CT9 1XS

Applicant : Metropolitan Property Realizations Ltd

Representative : Parsons Son & Basley

Respondent : The leaseholders

Representative :

Type of Application : Dispensation from Consultation

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 12th May 2020

DETERMINATION

Background

1. The Applicant has made application for dispensation from the consultation requirement in respect of replacement of lifts at the Property. The property has two lifts serving 18 floors. One lift has been condemned and the Applicant has concerns over the remaining lift. The Applicant seeks to replace both. The Property is a large 1960's tower block consisting of 143 flats over 18 storeys.
2. Directions have been issued by the tribunal on 6th December 2019, 14th February 2020 and finally on 17th April 2020.
3. Currently some 42 leaseholders object to dispensation and they are represented by Ms S Kenten. It is those leaseholders that are Respondents to this application.
4. Due to the current Covid 19 pandemic it has not been possible to list the matter for an oral hearing. The last directions provided that the matter would be determined on papers and provided each party a further opportunity to make any additional submissions not covered by those documents within the bundle which the tribunal already had. Both parties took up this opportunity and provided further statements.

DISCUSSION

5. The tribunal has considered the hearing bundle and additional submissions made by each party. References in [] are to page numbers within the bundle supplied under cover of letter from the Applicants representatives on 11th March 2020.
6. The tribunal reminds itself and the parties that under this application it is only considering whether or not it should grant dispensation from the requirements to undertake a statutory consultation pursuant to Section 20 of the Landlord and Tenant Act 1985. The tribunal also pays regard to the leading authority in this area being Daejan Investments Limited v. Benson and others [2013] UKSC 14. In reaching its determination the tribunal makes no findings as to whether the costs of the proposed works are recoverable from the leaseholders or any finding as to whether or not the same are reasonable.
7. Below the tribunal will precis the various submissions. It does not set them out in detail as these are well known to the parties and this decision will record the most relevant points and reference those documents upon which the tribunal has placed particular reliance. The tribunal has read and considered all documents in reaching its decision which include the 2 emailed submissions for the Respondents and one from the Applicants.

8. The Application was made by on 28th November 2019 [3-13]. The application provided that works had not yet commenced but it was envisaged that works would commence within three months being the lead in time required by the lift company. The application sought dispensation from the whole process.
9. The application refers to the fact that one of the two lifts has been condemned and so cannot be used. The remaining lift is requiring frequent repairs and also requires replacement in the opinion of the Applicant. Reference is made to the lifts themselves being obsolete.
10. It appears from the later submissions that the works have not commenced. The Applicants agents did on 16th March 2020 serve an Intention Notice allowing leaseholders until 20th April 2020 to make any representations and nominations.
11. The Respondents to this application have suggested given the intention notice has now been served and works have not commenced as envisaged under the original application that the Application should be withdrawn and the consultation followed through. The Applicant suggests that this remains impractical relying on certain evidence as to further breakdowns of the remaining lift.
12. The Applicants in their statement of case [34] rely on various reports. The Applicants agent refers to the flats being occupied by a broad range of residents. A timeline of events relating to the recent past of the lifts is within the bundle [45]. This provides that the previous managing agent obtained reports and specifications prior to Lift Number 2 being condemned on 21st October 2019.
13. A specification and quotation was obtained in July 2019 [47-101]. It would appear this was sent out to tender and a tender report was produced [103-106]. What is unclear is why no section 20 consultation was undertaken at this time? This is not explained particularly given the timescales it would appear as though consultation could have been adequately undertaken. We note however that the managing agent was not the same as the current agent who appear to have only been instructed in the later part of 2019.
14. The tender report recommended United Lift Services at a price of £442,685 plus vat. The tender refers to administration and supervision being charged by Technical Lift Consultancy Ltd at 20%. This tender report of 4th September 2019 recommended that the works should be “instructed without delay to avoid the certain probability that both lifts will suffer a critical failure, with any attempt at repair being uneconomical, due to the obsolescence of all the equipment.”

15. At [36-37] are a list of those flat owners who are Respondents. At [107-146] are copies of the various replies received to the initial directions from leaseholders. These can be summed up on the basis the leaseholders were not satisfied that it had been demonstrated that total replacement was required and that the process utilised to date did not demonstrate that the costs incurred were reasonable. Various leaseholders suggest consideration should be given to refurbishment.
16. A statement of case on behalf of the Respondents was filed [147-171]. This expanded upon the initial grounds raised and referenced above. In particular that on three previous occasions consultations over lift works had been undertaken dating back to 2014 and yet no works had been carried out. It is suggested if works had been undertaken some years previously replacement would not now be necessary. Further no evidence of the condemnation of one lift was provided and the leaseholders had not been made aware of the specification and tendering by the previous agent until this application. The point is made that simply because there is a new agent cannot absolve the Applicant, as freeholder, from its responsibilities.
17. In conclusion the Respondents suggest that there is evidence that repairs only could be undertaken. The respondents say on average each leaseholder would only pay about £500 for repairs compared with the estimated £4850 for lift replacement. They say this amounts to prejudice. The Respondents suggest following Daejan that dispensation is given for works proposed in 2018 totalling approximately £53,000.
18. A lift condition report provide by Elevate Consulting Ltd [295-314] dated October 2018 is within the bundle. This concludes [314] that the lifts have serious safety hazards and are “beyond their useful life and require immediate refurbishment”. The report estimates the cost of such would be in the order of £360,000 plus vat and associated professional fees and excludes costs of any firefighting upgrades which may be required.
19. Additional submissions were made by the Respondents in accordance with directions [341-363]. The current issues identified in the most up to date insurance inspection essentially match those contained in the inspection in 2017. In respect of the Elevate report (referred to above) the leaseholders say this is the first time they have seen the same and are unclear as who and on what basis the same was produced. The Respondents suggest much of what the report recommends are improvements and enhancements which are not required. The Respondents also challenge whether the proposed contractor, United Lifts are suitable. It is suggested as the current maintenance contractor they have a vested interest and various leaseholders challenge whether they have adequately attended to maintenance to date.

20. The Respondents suggest that refurbishment is still possible and feasible.
21. The Applicants representative made further representations by email on 23rd April 2020. He confirmed that notice of intention had been served and attached evidence which he says show there have been many call outs to the one functioning lift which substantiate the need for urgent works. The representative suggests that a condition could be attached allowing the Respondents to appoint their own lift expert whose views the Applicant would then have regard to and they would delay placing a contract for 28 days.
22. The Respondents representative, Ms Kenten emailed on 20th April 2020 to make short further submissions. She also attached what had been referred to as Appendices D & E which were not in the original bundle and also a copy of the Notice of Intention. Appendix D appears to be a note from Danny Rouse of United Lifts. It is undated and not on headed paper but suggests he has condemned lift 2. Appendix E is a list of call outs.
23. The tribunal has considered matters carefully. It is for the Applicant to determine how it wishes to fulfil its repairing covenants. What is clear (and does not appear to be disputed) works of some sort are required to the lifts. The issue is whether or not some form of cheaper repairs would be economic. It appears that the Applicant has determined not. The reasons for this decision are unclear. The Elevate report suggests costs with vat and professional fees of in the order of £500,000 compared with costs of about £620,000 for replacement if the United Lift Services tender was accepted.
24. The tribunal notes that the current process of considering refurbishment began prior to July 2019 which is when the Technical Lift Consultancy Ltd specification was prepared. No explanation has been provided as to why, when this was produced and then followed up with the obtaining of tenders, was a consultation not undertaken? This remains a mystery to the tribunal. Further it is unclear why the Applicant waited until April 2020 to send a Notice of Intention.
25. The tribunal presumes it will be necessary to revert to the contractors to see if the previous quotes offered may still be relied upon. Again the application is silent on this issue.
26. We have considered carefully whether the application should be dismissed. Weighing up the evidence carefully we determine that we should grant dispensation but subject to conditions which we set out below. We make clear that it was finally balanced but we note all parties seem to accept some work is required. Plainly such works need to progress and we believe the conditions we set out below

provide sufficient safeguards to overcome any prejudice which any leaseholder may suffer. In determining the same we have paid close regard to Daejan.

27. In granting dispensation the following conditions apply:
- The Applicant will, at its own cost, procure a report from an independent lift engineer who has not previously reported on the lifts at the property. They will be specifically asked to comment whether in their opinion the lifts are obsolete and whether in their professional opinion replacement is a reasonable approach if the lifts are obsolete rather than repair or refurbishment. Such report shall be provided to all the leaseholders as soon as reasonably practicable after receipt and the Applicant shall have regard to the same;
 - The Applicant shall serve Notification of Estimates including a schedule of any responses to the initial notice (in respect of which the window for observations has now closed). The time estimate for leaseholders to make any observations shall be reduced to 14 days from the date of service of this notice;
 - The Applicant shall not include any costs of this application within the service charges payable by the leaseholders;
 - The Applicant shall within 14 days of receipt of this decision send a copy to all the leaseholders regardless of whether they are a Respondent or not;
28. The tribunal believes that the above provides a proper balance. It is clear the Applicant has known that works are required for a not inconsiderable period of time. For whatever reason they have allowed such works not to be undertaken until the situation became in their opinion urgent. We accept it is for the Applicant to determine what works are required. Further we remind all parties that we make no determination as to whether the costs of such works are recoverable by the leaseholders or the reasonableness of the same.

Judge D. R. Whitney

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 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