



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

Case Reference	:	CAM/38UE/LDC/2021/0032
HMCTS code (paper, video, audio)	:	P:PAPERREMOTE
Property	:	12 -19 River View Terrace, The Brewery, Coopers Lane, Abingdon OX14 5AE
Applicant	:	The Brewery (Abingdon) Management Company Limited
Respondents	:	All leaseholders of dwellings at the Property (including any of their sub- tenants of any such dwelling) who are liable to contribute to the cost of the relevant works
Type of application	:	For dispensation from consultation requirements - Section 20ZA of the Landlord and Tenant Act 1985
Tribunal members	:	Mary Hardman FRICS IRRV(Hons)
Date of decision	:	8 November 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in a 51-page bundle from the Applicant. I have noted the contents and my decision is below.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in respect of qualifying works to refurbish and reinstall the lift and returning to service.

Reasons for the tribunal's decision

The application

- (1) This is an application to seek retrospective dispensation with the statutory consultation requirements in respect of urgent works to refurbish and reinstall the lift and return it to service.
- (2) The matter was urgent as the lift was not functioning. Residents on upper floors who were unable to use the stairs could not leave the building. Works were completed on 13 August 2021.
- (3) The total cost of the works was £4,280 plus VAT. (£5,136)
- (4) The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
- (5) In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
- (6) **The only issue here for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements**
- (7) **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable or by whom they are payable.**

The Property and parties

- (8) The Property comprises a self contained purpose built block of 8 apartments which is part of a larger estate. A lift serves the 8 apartments.
- (9) The application is made by Warwick Estates on behalf of the landlord, Fairhold Holdings (2006) Appts Limited. The application was made against the leaseholders of the flats (the “**Respondents**”)

Procedural history

- (10) The Applicant said that the works were urgent, as explained below.
- (11) Initial case management directions were given on 17 September 2021. They required the Applicant by 30 September 2021 to serve on the Respondents copies of the application form and the directions.
- (12) They were to file with the tribunal a certificate to confirm that this had been done, stating the date(s) on which this was done.
- (13) The Applicant confirmed that this had been done on 1 October 2021.
- (14) The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond 15 October 2021.
- (15) The directions further provided that this matter would be determined on or after 8 November 2021 based on the documents, without a hearing, unless any party requested an oral hearing
- (16) No leaseholder has responded to the tribunal, and no party has requested an oral hearing.
- (17) On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant's case

- (18) Documentation provided by the Applicant states that there were issues with the lift that required an initial call out to investigate. It was discovered that the lift main drive unit needed removing and taking to a workshop to be refurbished. On returning to site it needed re-installing, the software re programming and setting recalibrating. It then needed testing before returning to service
- (19) All leaseholders were informed that lift had failed and needed to be repaired urgently.

The Respondents' position

- (20) As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
- (21) The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed.

The tribunal's decision

- (22) Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
- (23) This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
- (24) Accordingly, in the circumstances set out in this decision, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the works.
- (25) For the purposes of this application, the tribunal determines under section 20ZA of the 1985 Act to dispense with all relevant consultation requirements in relation to works to repair and reinstall the lift.
- (26) **This is not an application for the tribunal to approve the reasonableness of the works or the reasonableness,**

apportionment or payability of the service charge demand. I make no finding in that regard and the leaseholders will continue to enjoy the protection of section 27A of the Act.

- (27) There was no application to the tribunal for an order under section 20C of the 1985 Act.
- (28) The Applicant shall be responsible for serving a copy of this decision on all leaseholders.

**Mary Hardman FRICS IRRV(Hons)
8 November 2021**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).