



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

**Case reference** : **LON/00BJ/LDC/2022/0248**

**Applicant** : **Putney Lodge Residents  
Association Ltd**

**Representative** : **N/A**

**Respondents** : **Long Residential Leaseholders at  
Putney Lodge, 5 St John's Avenue,  
SW15 2AJ**

**Representative** : **N/A**

**Type of application** : **For dispensation under section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal member** : **Tribunal Judge I Mohabir**

**Date of decision** : **14 March 2023**

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**DECISION**

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## ***Introduction***

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *retrospective* dispensation with the consultation requirements in respect of removal of asbestos boarding from the lift motor room at Putney Lodge, 5 St John's Avenue, SW15 2A (“the property”).
2. The Applicant is the freeholder of the property and the Respondents are the long leaseholders.
3. On or about 18 August 2021, the Applicant’s managing agent, Safe Property Management (“Safe”), instructed a specialist asbestos firm to carry out a survey of the property to update a previous asbestos survey carried out by the Applicant.
4. The survey found that the insulating boards fitted within the lift motor room located just above the top-floor landing are in a poor state and need to be attended to urgently. Safe temporarily stopped all access to the lift motor room for lift engineers until it was safe again to enter the space. Since access to the equipment was required urgently, as an interim solution, it was been decided that the damaged boards would be encapsulated with a special paint until a complete removal can be arranged.
5. However, estimates obtained for the removal of all boarding from all of the affected areas identified in the survey proved to be greater than was anticipated and not practical because it would involve the entire property having to be vacated by the occupiers for a minimum of 72 hours.
6. Consequently, the Applicant decided to limit the scope of the proposed work to the removal of asbestos boarding from the lift motor room only and this application is dealt with limited to this work.
7. The estimates obtained for doing this work varied from £4,929 excluding VAT to £6,800 plus VAT. It seems that the Applicant’s Board of Directors has approved the work. In the application it was indicated that the work was scheduled to commence in January 2023. Therefore, the Tribunal proceeds on the basis that the work had commenced and/or has been completed by now.
8. By an application dated 9 December 2022, the Applicant made this application for dispensation on the basis that it would shorten the waiting time and enable it to carry out the necessary works as soon as possible.
9. On 19 January 2023, the Tribunal issued Directions, which was served variously on the Respondents by Safe on 2 February 2023. The Respondents were directed to respond to the application stating whether they objected to it in any way.
10. None of the Respondents have objected to the application.

## **Relevant Law**

11. This is set out in the Appendix annexed hereto.

## **Decision**

12. As directed, the Tribunal's determination "on the papers" took place on 14 March 2023 and was based solely on the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.
13. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
14. The issue before the Tribunal was whether dispensation should be granted in relation to the removal of asbestos boarding from the lift motor room only. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.
15. The Tribunal granted the application for the following reasons:
  - (a) the Applicant is, in effect, a "tenant owned" company and it seems that it has already approved the work that is the subject matter of this application.
  - (b) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
  - (c) arguably, the mere presence of asbestos in the lift motor room does not pose an immediate health and safety risk to the Respondents. That may arise in the event that an engineer needs to service or repair the lift that might involve disturbing the areas where the asbestos is found. It is not suggested in the application that the lift is in disrepair.
  - (d) therefore, there does not appear to any particular reason why the Applicant cannot carry out statutory consultation.
  - (e) however, as stated earlier, the Applicant is a "tenant owned" company and, perhaps for this reason, there have been no objections to the application. For these reasons, in the Tribunal's judgement, there would be little practical point in the Applicant having to carry out statutory consultation to reach the same position now.

- (f) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act.
16. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.
17. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 14 March 2023

### **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).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount, which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

**Section 20ZA**

- (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.