



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

Case reference	:	CAM/26UD/LDC/2023/0010
Property	:	Block C, Tanners Wharf Bishops Stortford, Hertfordshire CH25 3FE
Applicant	:	Sinclair Gardens (Inv) Limited (represented by Virtus Property Management)
Respondents	:	The leaseholders of the dwellings who are liable to contribute to the costs of relevant works
Type of application	:	For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985
Tribunal members	:	Judge J. Oxlade
Date of decision	:	3rd May 2023

DECISION

This determination is made on the basis of the papers only, it being clear that the issues highlighted therein suggest that it is suited to consideration in this way. None of the lessees requested a hearing; further, it is in the interests of justice to progress this application without delay in light of the only lift in the block being out of service, which in a 5-storey building, housing some elderly residents; it causes not only inconvenience, but potentially, a risk to the residents who have come to rely on the lift being in commission, and will otherwise have to use the stairs.

The documents available to the Tribunal comprise a bundle of document filed by the Applicant's representatives (Virtus Property Management), comprising:

the application, a letter dated 26th March 2023 explaining the problem, together with Directions made by Judge Harman FRICS IRRV (Hons) on 13th March 2023, an email dated 27th March 2023 confirming that the Tribunal's directions made as to service of the application on interested parties had taken place (together with a list of the intended recipients of the letter), a report from HSB dated 9th February 2023 summarising faults found, and a detailed quote from Essex Lift dated 3rd March 2023, and sample lease.

Decision of the tribunal

The tribunal dispenses with all the consultation requirements to rectify the problems with the lift referred to in the application, the letter to lessees dated 26th March 2023 and further particularised in the quote of Essex Lifts dated 3rd March 2023 pursuant to section 20ZA of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination, pursuant to section 20ZA of the Landlord and Tenant Act 1985, as amended (“the 1985 Act”) for the dispensation from consultation requirements in respect of certain “qualifying works” (within the meaning of section 20ZA), which works have not yet started, but the intention is to start as soon as possible, the parts having been ordered..
2. The applicant is the freeholder of Block C, Tanners Wharf (“the property”), comprising a building of 22 units, let out on long leases.
3. The respondents are the leaseholders of the flats in the property who are potentially responsible for the cost of the works under the terms of their leases.
4. The qualifying works are described in the application as urgent for the following reasons: the lift was malfunctioning, and on investigation, it was discovered that the control/operating system (and ancillary systems) had malfunctioned, and needed replacement; however, the systems is now obsolete, and the only option was to give it a total renovation. The intention is to salvage parts from this system as spares, for use in the other blocks in the development.
5. At this stage the only issue is whether it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act and the Service Charges (Consultation etc)(England) Regulations 2003 in respect of the proposed works; the Applicant says that the delay inherent in following the consultation process would require the residents to rely solely on the stairs, which – as some are elderly, and rely on the lift – could be inconvenient at best and injurious to health (risk of falling) for them. As any party discontent with the service

charges incurred as a result of these works can make a future application under section 27A of the 1985 Act to determine the payability of any service charge under the lease, those matters are not determined as part of this application.

Paper determination

6. The application is dated 8th March 2023. Directions were issued by Judge Hardman on 13th March 2023 which required the applicant landlord by 27th March 2023 to send to each of the leaseholders, copies of the application form, a brief letter (including an indication of whether or not the landlord intended to make an insurance claim in respect of the works) and a copy of the directions.
7. The directions gave those leaseholders who oppose the application until 12th April 2023 to respond to the tribunal and to send to the landlord a statement in response to the application with a copy of their reply form.
8. No objection has been submitted by the respondents who have taken no active part in this application, and have provided no response at all.
9. The directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. Two copies of the paginated bundle were required to be sent to the tribunal by 24th April 2023.
10. The directions provided that the tribunal would determine the application based on written representations unless any request for an oral hearing was received by 12th April 2023; no such request was received. Therefore, this application has been determined by the tribunal on the information supplied by the applicant.

The law

11. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

12. In the case of *Daejan Investments v Benson and others* [2013] UKSC 14 the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, said *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants*

were prejudiced in either respect by the failure of the landlord to comply with the requirements'.

Findings of fact

13. The applicant gives the following reasons for seeking dispensation: the works have become urgent the lift is out of commission and this is (at best) inconvenient to residents and (at worst) potentially injurious to health, because the building is 5 storeys high and includes elderly residents.
14. Within the tribunal bundle are two quotes: from Essex Lifts and HSB.
15. None of the lessees have raised objection to the short-circuiting of the dispensation of consultation.
16. On the basis of the information submitted by the applicant, and in the absence of any objections or submissions from the respondents on the application for dispensation, the tribunal is satisfied that the qualifying works are necessary, and somewhat urgent in view limitation in access to those on the upper floors/those who are unable to easily manage stairs/ those who are immobile.
17. As the respondents have raised no objection to the works being expedited as part of the existing, the Tribunal finds no evidence that the respondents would suffer prejudice if dispensation were to be granted.

The Tribunal's decision

18. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act *"if satisfied that it is reasonable to dispense with the requirements"*.
19. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.
20. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.
21. There was no application before the tribunal for an order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge). This could be the subject of a future application in the event that any costs are charged to the leaseholders.

22. It is the responsibility of the applicant to serve a copy of this decision on all respondents.

Name: Judge J. Oxlade **Date:** 3rd May 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).