FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00CJ/LDC/2022/0053**
Property	**:**	**Apartments 1-8, Keel House, Garth Heads, Newcastle upon Tyne, NE1 2JE**
Applicant	**:**	**Adderstone Sunderland LLP**
Representative	**:**	**Adderstone Asset Management Limited**
Respondent	**:**	**Various Residential Long Leaseholders (see Annex)**
Type of application	**:**	**Dispensation with statutory consultation requirements under s.20ZA Landlord and Tenant Act 1985**
Tribunal member(s)	:	**Tribunal Judge Jodie James-Stadden, Tribunal Member Aaron Davis, MRICS FAAV**
Date of decision	**:**	**23 May 2023**

DECISION

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Decision of the Tribunal

(1) Dispensation is granted pursuant to section 20ZA of the Landlord and Tenant Act 1985.

The Application

1. The application is brought by Adderstone Sunderland LLP ("the Applicant"), the freehold owner of Apartments 1-8, Keel House, Garth Heads, Newcastle upon Tyne, NE1 2JE ("the Flats").

2. The property in which the Flats are located is described as a "mixed-use property five storeys in height", with commercial units on the ground and first floors and residential properties i.e. the Flats, on the second and third floors. The Flats are serviced by a lift, the use of which is exclusive to them.

3. The respondents are the 6 long leaseholders of the 8 Flats, 3 of the Flats having the same long leaseholder, Mr Azim Adatia. Copies of the leases for each of the Flats have been provided, save for that for Flat 3, which the Applicant states has been misplaced. Each of the 7 leases provided are in materially identical terms, and it is to be assumed that this is so for Flat 3, as well.

4. The Applicant seeks dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") in respect of consultation requirements in relation to certain qualifying works within the meaning of the Act ("the Application"). The Application is dated 19 October 2022.

5. The qualifying works comprise works to investigate the fault in the residential lift which, at the time that the Application was submitted to the Tribunal, was out of order, having broken down at the top floor of Keel House, as well as repairs to rectify the fault, once identified.

6. The Application and subsequent Statement of Case (dated 23 December 2022) state that there is urgency to the Application by reason of the occupier of Flat 7, which is situated on the third floor, being a wheelchair user and essentially unable to leave her home in the absence of a functional lift, use of the stairs being "extremely hazardous and difficult for her", as reported to the Applicant by that occupier's carers.

7. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper Determination

8. Directions were issued by David Higham, Legal Officer, on 14 December 2022.

9. Those directions provided, amongst other things, that the Applicant must within 14 days of the date of the directions, send electronically to the

Tribunal, with a copy to each Respondent, a bundle of documents consisting of:

a. a statement of case explaining why the application had been made;
b. any correspondence sent to the leaseholders in relation to the works;
c. detailed reasons for the urgency of the works and the consequences upon the leaseholders of any delay;
d. any quotes or estimates for the proposed works and relevant reports; and
e. copies of any other documents the Applicant sought to rely on in evidence.

10. The directions further provided that any Respondents who opposed the Application must within 21 days of receipt of the documents referred to at paragraph 9 above send to the Applicant and to the Tribunal any statement in response to the Applicant's case, including any documents upon which they sought to rely in evidence.

11. The directions thereafter provided that the Applicant must within 7 days from the expiry of the date specified in respect of any filing by the Respondents provide any final statements in reply to both the Tribunal and all participating Respondents.

12. The directions further stated that the Tribunal would deal with the Application by a determination on the papers, unless any party requested a hearing. Any party wishing to make representations at an oral hearing before the Tribunal was directed to inform the Tribunal office of this in writing within 42 days from the date of the directions.

13. As noted above, the Applicant filed a Statement of Case dated 23 December 2022 in support of its Application, together with various exhibits.

14. Responses to the Application were received by the Tribunal from 4 of the 6 long leaseholders, as follows:

a. Azim Adatia (Flats 3, 7 & 8) by email dated 11 January 2023;
b. Colin Saliceti (Flat 1) by email dated 12 January 2023;
c. Amit Kapila (Flat 4) by email dated 12 January 2023;
d. Dharmesh Bhardwa (Flat 2) by email dated 28 February 2023.

Each of these leaseholders objected to the Applicant's request for dispensation from the consultation requirements.

15. No response to the Application was received from the remaining 2 long leaseholders.

16. The Tribunal forwarded the responses received to the Applicant (which had not been served with copies direct) on 08 February 2023, and the Applicant provided a reply to the responses on 14 February 2023.

17. No request for an oral hearing was made to the Tribunal by any party and the Application has been determined by the Tribunal on the papers set out above.

18. As expressly stated in the directions dated 14 December 2022, at paragraph 2, the only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the consultation requirements. **The Application does not concern the issue of whether any service charge costs resulting from any works are reasonable or indeed payable and it will be open to the leaseholders to challenge any such costs charged by the Applicant**.

The Law

19. Section 20ZA(1) of the Act provides that:

> '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.'

20. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the act was to ensure that tenants are protected from paying for inappropriate works and from paying more than would be appropriate, went on to state:

> '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'.

Evidence

Applicant

21. In its Statement of Case dated 23 December 2022, in addition to the information referred to at paragraphs 2 to 6 above, the Applicant stated that:

    a. the fault had been investigated by its appointed lift engineer, Northern Elevator Limited ("NEL");
    b. NEL had determined that the lift had over-travelled at the top floor;
    c. NEL had quoted £2,000 plus VAT for the erection of scaffolding to investigate the fault;
    d. its representatives had been contacted on 10 September and 17 October 2022 by the carers of the occupier of Flat 7, stating that the absence of a working lift had effectively left her housebound due to her disabilities;

e. it had issued both an explanatory letter to the leaseholders on 19 October 2022 and an initial s.20 consultation notice on 21 October 2022, copies of which were exhibited;
f. it considered it unreasonable to delay the lift repairs due to the serious difficulties being experienced by the occupier of Flat 7;
g. repairs to the lift had accordingly been completed by NEL at the Applicant's direction on 11 November 2022; and
h. the total cost of the works (including the scaffolding and the repairs) was £8,925 plus VAT, and a copy of the invoice and NEL's timesheet were also exhibited.

22. The timesheet provided by NEL states that the cause of the lift breakdown had been identified as:

"inspection engineer had changed magnets round causing lift to crash stop at top floor causing safety gear to pull in have freed safety gear and put magnets the correct way [sic]".

Respondents

23. The emails sent to the Tribunal by the 4 long leaseholders who responded to the Application are very similar in their content. In summary, the objections that they raise are as follows:

a. that there had been a lack of transparency by the Applicant, in failing to provide timely and regular updates;
b. that the issue did not appear to have been dealt with as an emergency;
c. that the liability for the cost of the lift repairs was unclear, the paperwork stating that the problem had been caused by the company which had previously inspected the lift;
d. that they wish to manage the block themselves;
e. that the Applicant has failed to provide accounts with details of service charges;
f. that it is unclear if the amount charged is reasonable; and
g. (in Mr Adatia's response) that he would have liked the opportunity to instruct a contractor of his choosing to provide a quote.

Applicant's Reply

24. At the time of the Applicant's reply, it was not in receipt of the response filed by Mr Bhardwa. Mr Bhardwa's response does, however, raise the same objections as those raised by the other Respondents, which are addressed in the Applicant's reply.

25. The Applicant's reply is supported by a timeline of events, at appendix 2.

26. In summary, the Applicant states, and the timeline shows, that:

a. the lift failure would have been immediately apparent to all occupiers;
b. Mr Saliceti, Mr Kapila and Mr Adatia are all represented by the same agent, George F White;

c. George F. White was notified that the lift was out of order by email on 15 September 2022, the same day that the Applicant was informed of the problem;
d. NEL was immediately instructed to attend, and did so, on 15 September 2022;
e. the lift had previously been inspected by British Engineering Services Limited ("BES"), a company appointed by the insurance brokers;
f. the Applicant intimated a claim to the insurance brokers on 20 September 2022 arising out of BES's inspection of the lift and its subsequent breakdown;
g. further communications between the Applicant and the broker/BES ensued, in which BES continued to deny liability for the fault with the lift;
h. following occupier complaints, and with BES continuing to deny liability, NEL was instructed to carry out the works on 11 October 2022, less then 4 weeks after the Applicant was first notified of the problem;
i. the Applicant was very aware of the difficulties being experienced by the occupier of Flat 7, in light of which it did not consider it appropriate to delay the repair;
j. the Applicant's letters dated 19 and 21 October 2022 explained to the long leaseholders the fault that had occurred and what it proposed to do to address it;
k. having instructed NEL to proceed on 11 October 2022, and having chased a date for the works to be carried out, NEL erected scaffolding on 08 November 2022 and completed works on 11 November 2022;
l. the Applicant received no notice of any objections to the repair works other than those filed in these proceedings in early 2023.
m. the Applicant instructed NEL, rather than any other contractor, as it had an ongoing lift maintenance contract with NEL, to year ending December 2022, by reason of which NEL was familiar with the operation of the lift; and
n. discussions with the broker/BES are ongoing regarding liability for the lift breakdown.

Findings of Fact

27. The Tribunal is satisfied that the Application was properly brought and is in proper form.

28. Four long leaseholders have lodged objections to the Application. The Applicant has replied to the objections that have been raised.

29. Dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how that power may be exercised is given in Daejan (referred to at paragraph 20 above), which states that leaseholders must demonstrate that they have suffered some prejudice by not being consulted.

30. The Tribunal is satisfied on the evidence provided that:

a. the works, which are qualifying works, were required by virtue of the Applicant's legal obligations as landlord to the Respondents to (inter alia) maintain and repair the lift pursuant to the terms of the Respondents' leases;
b. the works were necessary; and
c. the works were urgent, by reason in particular of the occupier of Flat 7 being disabled and a wheelchair user and effectively unable to leave her home whilst the lift was out of service, other than by using the stairs which was extremely hazardous and difficult for her.

31. The Tribunal finds that, on being informed that the lift was out of service on 15 September 2022, the Applicant did respond with urgency in that:

a. it immediately instructed NEL to attend to investigate;
b. it immediately notified George F. White of the problem;
c. it swiftly contacted its insurance broker to intimate a potential claim and begin a dialogue in that regard (which dialogue continues);
d. on being advised of the nature of the fault (user error) on 28 September 2022, it communicated that information to the broker;
e. having received a further denial of liability from BES, it instructed NEL to proceed with the repair on 11 October 2022; and
f. it thereafter chased NEL to commence works.

32. The Tribunal notes that the Applicant arranged for the requisite investigations and repair work to be carried out by NEL on the basis that this was the existing lift maintenance contractor, with which it had an ongoing contract at the material time, and which accordingly had a familiarity with the operation of the lift in question.

33. The Tribunal is also satisfied that the Applicant took steps to inform all leaseholders of the situation and to keep them updated, both by its email to George F. White on 15 September 2022 and by its letters to the leaseholders on 19 and 21 October 2022, to which the Tribunal notes that the Applicant received no responses.

34. The Tribunal notes Mr Adatia's comment that he would have liked the opportunity to present a quote from his own contractor but finds that this would have caused delay, in a situation which required an urgent response. The Tribunal notes, too, that there is no evidence that an alternative contractor would have proposed alternative works or costings in any event.

35. Insofar as other matters are raised in the Respondents' objections (self-management of the block, the reasonableness or otherwise of the amount charged, the provision of accounts), those are not issues pertinent to determining the sole question before the Tribunal, which is whether or not prejudice has been suffered by the leaseholders by reason of the Applicant's failure to consult regarding how the lift was to be repaired.

36. By reason of the foregoing, the Tribunal is not satisfied that the Respondents have provided any convincing evidence that they have

suffered prejudice of the type required, as set out in the case of Daejan, referred to above.

Determination

37. In the circumstances as set out above, the Tribunal considers it reasonable to dispense with the consultation requirements. Dispensation is thus granted pursuant to section 20ZA of the Landlord and Tenant Act 1985.

38. 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.

Tribunal Judge : Jodie James - Stadden
23 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.

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