



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

Case reference : **LON/00BG/LDC/2023/0273**

HMCTS code : **P: PAPERREMOTE**

Property : **The Block, 19 Cuba Street, London, E14 8LD**

Applicant : **The Block (Cuba Street) Management Limited**

Representative : **Ripley Law**

Respondents : **The leaseholders in the application**

Representative : **None**

Type of application : **To dispense with the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985**

Tribunal members : **Judge Sarah McKeown
Mr. K. Ridgeway MRICS**

Venue of hearing : **10 Alfred Place, London, WC1E 7LR**

Date of decision : **26 February 2024**

DECISION

DECISION

The Tribunal grants the application for unconditional retrospective dispensation from statutory consultation in respect of the subject works, namely works to the lift in Block Wharf, 19 Cuba Street, E14 8LD (including scaffold construction of a temporary beam, removal of the lift motor that is faulty and reinstallation of the newly installed repaired motor), which commenced on or about 24 October 2023, at a cost of £8,973.24 (inclusive of VAT).

The Applicant should place a copy of this decision together with an explanation of the leaseholder’s appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent place in the common parts of the Property.

This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or cost of the work.

References are to page numbers in the bundles provided for the hearing.

The Application – p.4

1. The Applicant has applied for retrospective dispensation from the statutory consultation requirements.
2. Block Wharf, 19 Cuba Street, E14 8LD (“the Property”), is a purpose-built block consisting of 26 units.
3. The cost of the works was £8,973.24 and were: scaffold works, constructions of a temporary beam, removal of the lift motor that was faulty and reinstallation of the newly repairing motor. In the application, it was said that Unique Lifts were carrying out the works: they had started on 24 October 2023 and were, at the time of the application, ongoing.
4. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250.
5. The Applicant contends:

- (i) The matter was urgent – the works were urgently required as the lift was out of service, the block has seven floors and the works were required as soon as possible for the residents on the upper floors. It was said that the directors of the company were in agreement that the works needed to be done as soon as possible;
 - (ii) There had been limited consultation due to the urgency of the works.
- 6. The Applicant relies on a witness statement of Ms. Cameracanna (p.21) which states, in summary, that the works that were required were lift works involving: scaffold construction of a temporary beam, removal of the lift motor that is faulty and reinstallation of the newly installed repaired motor – the lift motor was reported broken and the parts were obsolete. The works were said to be urgent as the lift had been out of service and the residents on the upper floors needed the issue rectified as soon as possible. She confirms that the works were complete and the cost was £8,973.24 inclusive of VAT. She exhibits a letter from Unique Lifts (p.26) which confirms, among other things, that they had attended, the machine was obsolete and they had instructed a machine specialist to attend to survey for its removal and repair. The letter sets out the proposed works and the proposed cost was £7,447.70 excluding VAT (£8,972.40 inclusive of VAT).
- 7. By the order of dated 15 November 2023 (p.15) the Tribunal identified that the only issue for the Tribunal was whether it was reasonable to dispense with the statutory consultation requirements. It was made clear that the application did not concern the issue of whether any service charge costs would be reasonable or payable.
- 8. The order provided, among other things:
 - (a) The Applicant had to send to the leaseholders copies of the application form, a brief statement to explain the reasons for the application (if not already detailed), these directions and display a copy of those documents in a prominent place in the common parts;
 - (b) Applicant’s reply to the statements in opposition.
- 9. On 7 December 2023, the Applicant confirmed to the Tribunal that this had been done (p.23).
- 10. The directions provided that the application would be dealt with on the papers unless a request for a hearing was received. No such a request was received by the Tribunal.

The Lease – p.30

11. The Lease for Plot 3 Cuba Street, London E14 8LD is dated 2 February 2006 and was between Weston Homes (City) Limited (Landlord), the Applicant (the Company) and North British Housing Limited (Tenant). It lets “all the rooms on the ground and first floor of the Building” and defines such as “the Property” (p.34).
12. It defines “the Common Parts” as including “any lift”: clause 32. Sch. 4 sets out the obligations of the Company, which includes (para. 5) maintaining and keeping in good repair and to renew or replace as appropriate “the Common Parts”.

Documentation

13. The Applicant has provided a bundle of documents, comprising a total of 51 pages.

The Respondents’ case

14. No objection has been received from the leaseholders.

Law

15. Section 20ZA(1) of Landlord and Tenant Act 1985 provides:
“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.”
16. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.
17. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 in reaching its decision. In that case, in summary the Supreme Court noted the following:
 - (a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements;
 - (b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - (c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

(d) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

(e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).

(f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

(g) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

(h) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

(i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Determination and Reasons

18. It is important to note that, the only issue for the Tribunal, in terms of this application, is whether it is reasonable to dispense with the statutory consultation requirements.
19. The Tribunal finds as follows:
20. (1) The Applicant did not comply with the consultation requirements, but as stated in *Daejan*, dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
21. (2) The Tribunal takes into account that these were urgent works – this is a seven-storey block and the works were to ensure the lift would work.
22. (3) No objection has been raised by the Respondents.
23. (4) Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application, but it is noted that no issue is raised by the Respondents as to the works carried out. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or costs of the work.

24. (5) It is not the case that non-compliance with s.20 has caused prejudice to the Respondents.
25. The Tribunal is therefore satisfied that it is reasonable to grant unconditional dispensation in respect of all or any of the consultation requirements in relation to the subject works.

Costs

26. The Tribunal has not been asked to make an order for costs.

Judge Sarah McKeown
26 February 2024

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)