



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

Case Reference : **LON/00BG/LDC/2023/0309**

Property : **Flats 1-74, 187 East India Dock
Road, London E14 0EF**

Applicant : **Hawksmoor Wren Limited**

Representative : **Mr Jason Avraamides (Director of
Hawksmoor Wren Limited)**

Respondents : **The Riverside Group Limited and
various residential leaseholders
and sub-tenants at 187 East India
Dock Road**

Representative : **Unrepresented**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985 - Dispensation with
consultation requirements**

Tribunal member : **Judge J P Donegan**

**Date of Paper
Determination** : **12 March 2024**

Date of Decision : **12 March 2024**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 213 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 (‘the 1985 Act’) for lift repairs at 187 East India Dock Road, London E14 0EF (‘the Property’), as detailed in the adjusted tender from Otis Limited (‘Otis’) dated 28 March 2023.**
- (b) No terms are imposed on the grant of dispensation.**
- (c) The applicant shall send a copy of this decision to each of the respondents and any recognised residents’ association, either by email, hand delivery or first-class post. They shall also display a copy in a prominent place in the common parts of the Property. They must send an email to the Tribunal by 26 March 2024, confirming the date(s) when this was done.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted to the Tribunal on 07 December 2023. Directions were issued on 19 December and the case was allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 12 March 2024.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The applicant is the freeholder of the Property, which is a 15-storey purpose-built block, containing 74 flats. The respondents are the long leaseholders of these flats and the subtenants of Riverside Group Limited, which is the leaseholder of 20 of the flats.
5. The applicant seeks retrospective dispensation from the statutory consultation requirements for repairs to the two lifts at the Property. These repairs involved the replacement of lift suspension belts and the installation of belt pulse monitors. The need for these repairs was identified in a report from Zurich Engineering dated 24 December 2022.

6. The applicant served a s.20 notice of intention on the respondents and obtained two tenders, before arranging the repairs. The cheapest tender was from Otis, which has a maintenance contract for the lifts, for £30,382.42 (including VAT). This was subsequently reduced to £13,920.48 (including VAT) on 28 March 2023, as some of the repairs were covered by the maintenance contract.
7. The applicant instructed Otis without completing the s.20 consultation. The repairs were undertaken in July 2023.
8. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The grounds of the application

9. The dispensation application was accompanied by a helpful document headed “*DETAILS OF CASE*”, which set out the applicant’s grounds. These include:
 - (a) The repairs were urgent given the risk of lift failure, the consequent risk the lifts would then be inoperable and the need to ensure resident safety.
 - (b) Originally it was unclear whether the repairs would constitute one or two sets of qualifying works for consultation purposes.
 - (c) The applicant secured a substantial reduction in the Otis tender. The reduced tender was only just above the s.20 threshold and was far below what could reasonably be expected from other contractors, reflecting the terms of the maintenance contract.
 - (d) Only two flats are liable to contribute more than the statutory threshold (£250) towards the lift repairs.
 - (e) There was partial consultation with the respondents.
10. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No objections have been received by the applicant or the Tribunal.

The Tribunal's decision

11. The Tribunal grants dispensation for the lift repairs as detailed in the Otis tender dated 28 March 2024. No terms are imposed on the grant of dispensation.

Reasons for the Tribunal's decision

12. The repairs were clearly necessary, given the terms of the Zurich Engineering report. The repairs were urgent, given the risk of lift failure and potential harm and/or inconvenience to residents. A full section 20 consultation would have taken several months, and it was reasonable for the applicant to instruct Otis, based on the reduced tender, rather than complete the consultation.
13. None of the respondents has contested the application or identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation. Further, the fact that some of the repairs were covered by the maintenance contract meant that Otis could undertake this work on favourable terms.
14. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
15. This decision does not address the cost of the lift repairs, or whether the respondents are liable to contribute to this cost via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act.

Name: Judge J P Donegan

Date: 12 March 2024

Rights of appeal

1. 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.
2. 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.

3. 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.
4. 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.
5. 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.
6. 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 the appropriate tribunal for a determination to dispense with all of 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.
- (2) In section 20 and this section –
“qualifying works” means works on a building or any other premises, and
“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which –
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.