FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UC/LDC/2023/0051**
Property	**:**	**The Cloisters, Church Lane, Kings Langley, Herts WD4 8JT**
Applicant	**:**	**Longhurst Group Limited**
Respondents	**:**	**The leaseholders**
Type of application	**:**	**For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal member	**:**	**Judge K. Saward**
Date of decision	**:**	**30 April 2024**

DECISION AND REASONS

Description of determination

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents comprise an unpaginated bundle of some 48 pages from the applicant, a response form and letter dated 7 April 2024 from the leaseholder of No 12 The Cloisters along with the applicant's letter of response on 15 April 2024. The contents of all these documents are noted.

The order made is described below.

Decision of the tribunal

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of works to replace the lift in block 1-10 of the property.

REASONS

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 of consultation requirements in respect of certain "qualifying works" (within the meaning of section 20ZA).

2. The applicant is the landlord of The Cloisters, Church Lane, Kings Langley ("the property"), being a scheme consisting of 2 separate blocks of 25 leasehold flats for residents over 55 years of age. The development was built in 1987.

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 lease.

4. The qualifying works are described in the application form as the replacement of the current lift in block 1-10. At the time of the application, it was estimated that a new lift would be installed in approximately 18 weeks. Those works are expressed to include decommissioning and removal of the current lift, then installation and recommissioning of the new lift. The works have since been completed.

5. By virtue of sections 20 and 20ZA of the 1985 Act, any relevant contributions of the respondents through the service charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation) (England) Regulations 2003 were: (a) complied with; or (b) dispensed with by the tribunal. In this application the only issue is whether it is reasonable to dispense with the consultation requirements.

6. **Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under section 27A of the 1985 Act to determine the payability of any service charge under the lease.**

The law

7. 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.'*

8. 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, 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 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'*.

Paper determination

9. Following receipt of the application, the tribunal issued directions on 18 March 2024. These required the applicant by 28 March 2024 to send to each of the respondents, by hand delivery, first-class post (or email, if practicable) copies of the (i) application form (ii) a brief description of the works (iii) all estimates obtained (iv) any other evidence relied upon, and (v) the tribunal directions. By letter dated 26 March 2024, the applicant confirmed that these steps had been taken, and a copy of the tribunal's letter and directions were additionally displayed on the communal notice board.

10. The directions gave those leaseholders who oppose the application until 15 April 2024 to respond to the tribunal by completing a reply form and returning it to the tribunal. At the same time, any leaseholder in opposition would need to send to the landlord a statement in response to the application with a copy of their reply form and copies of documents relied upon.

11. The tribunal received one reply form from Mrs Joan Parsons of No 12 The Cloisters, who had written to the applicant by letter dated 7 April 2024 in response to the application. The applicant filed a copy of its letter of reply to Mrs Parsons dated 15 April 2024.

12. The directions required the applicant to prepare a bundle of documents containing all the documents on which it relies, including copies of any replies from the leaseholders. A bundle was submitted to the tribunal,

as required. The directions provided that the tribunal would determine the application based on written representations unless either party made a request for an oral hearing by 9 April 2024. No such request was received. Therefore, this application has been determined by the tribunal on the information supplied by the applicant and Mrs Parsons.

Consideration

13. 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"*.

14. The applicant explains that block 1-10 has two floors, with 5 flats situated on each floor. The block has two stairwells and a lift. The lift to block 1-10 needs to be replaced because the main circuit board which serves the lift has broken. Due to this fault the lift is deemed to be unsafe as it is able to move uncontrolled with the doors open in an operation mode known as 'relevelling'. The lift was installed in 1988 and the required parts are obsolete and no longer manufactured.

15. It had been proposed to replace both lifts in 2024/25. Section 20 consultation has begun to replace the lift in block 11-25. The applicant says that it is unable to follow the same process for block 1-10 as the lift is broken and needs replacing urgently.

16. The applicant wrote to all residents on 18 September 2023 giving notice of its intention to apply to the tribunal for a dispensation. The letter explained that there were serious safety concerns over the lift to block 1-10 and there was no option but to replace the lift. In the interim, a stairlift had been installed to make sure higher floors were accessible.

17. The applicant's statement of case to the tribunal, states that it has been advised of two available options to return the lift to a safe working condition. Option 1 is refurbishment with a new control system installed and re-wire of current electrics to provide an estimated additional 5-10 years of working order. The anticipated costs would be £81,325.87 (plus VAT) but full replacement could be needed in 5-10 years. Option 2 is replacement of the lift now to provide 15-20 years of reliability at a cost of £87,800.99 (plus VAT).

18. In verification of the above, a copy of a technical report from the contractor is supplied from 25 July 2023. This explains that multiple technical investigations were undertaken, and components were replaced within the control panel without success. Based on the age of the equipment, they recommended replacement. The report confirms the lift was unsafe to use.

19. The applicant seeks dispensation due to concerns over (i) the well-being

of residents not being able to exit the building (ii) health and safety issues for residents and visitors not being able to use the lift, and (iii) delay that would be caused to complete a section 20 process.

20. In opposition to the application, Mrs Parsons expresses concern that upon purchase of her flat she was given to understand there was a considerable amount of surplus funds and no major works planned. There is now a confirmed deficit in the 'major works' fund. When the applicant acquired the property around April 2017, the lifts were approaching 30 years old. It is claimed that since then a lack of proper planning for replacement of the lifts, in line with the Association of Retirement Housing Managers' Code of Practice, has resulted in a financial burden being placed upon leaseholders. If the lift replacement had been scheduled earlier, a fund would have been built up towards the cost of replacement. It has caused detriment to those like Mrs Parsons who recently purchased their flat. Doubt is also cast on whether a stock condition survey was carried out.

21. Mrs Parsons also flags up that the lift failed on 4 July 2023 with the contractor's investigations reported on 25 July 2023 and tender submitted 16 August 2023. The tribunal application was made on 22 September 2023. It is suggested that the time taken of over 11 weeks was surely long enough to arrange alterative investigations and quotes.

22. In reply, the applicant says that it is unable to predict when a lift might break or require replacement. Major works are discussed with leaseholders annually. The major works contribution has been increased annually but kept low in consideration of the financial impact upon residents. The lift was still within its operational life cycle and so it was reasonable to push back its replacement for funds to be collected through the service charge. The applicant considered it unreasonable to increase the costs for a major works component which, at the time, did not need replacing. The stock condition survey is due before June 2024.

23. The tribunal understands the points expressed by the respondent. However, it is important to emphasise that the tribunal is not considering as part of this application whether the amount of any service charge will be reasonable or payable. Concerns over the individual financial burden placed upon leaseholders falls outside the scope of this determination as do past issues over the availability of accounts.

24. There is no evidence that the applicant should have realised that the lift would break down when it did and taken precautionary measures to prevent such occurrence. Nor is there evidence supplied that the lift could have been replaced at lesser cost. There is evidence in the form of the contractor's report to confirm that the lift was unsafe, and attempts were made to fix it. Clearly, the lift could not be used and that does not appear to be in dispute. There was imperative for works to be

undertaken without unnecessary delay to allow accessibility by residents and visitors to and from the upper floor. Realistically, the consultation process would have caused delay with the contract unable to be placed as soon. Refurbishment of the lift would have been cheaper, but there is no suggestion that option should have been pursued in the circumstances.

25. The tribunal is satisfied that the qualifying works were necessary and urgent in nature to provide safe accessibility of the upper floor of the block for all users. The tribunal finds no evidence that leaseholders would suffer prejudice if dispensation were to be granted.

The tribunal's decision

26. In the circumstances set out above, the tribunal considers it reasonable to dispense with the consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.

27. 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 of the work and/or whether any service charge costs are reasonable and payable.

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

Name: Judge K. Saward Date: 30 April 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).