



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

**Case reference** : **LON/00BE/LDC/2022/0175**

**Property** : **The Barrow Stores, 40-42 Decima Street, London, SE1 4QQ**

**Applicant** : **42 Decima Street RTM Company Limited**

**Representative** : **Hurford Salvi Carr Property Management Limited**

**Respondent** : **Leaseholders at The Barrow Stores, 40-42 Decima Street, London, SE1 4QQ as per the attached Appendix**

**Representative** : **None**

**Type of application** : **Section 20ZA Landlord and Tenant Act 1985- To dispense with the requirement to consult leaseholders about the works.**

**Tribunal member(s)** : **Judge: N Haria  
Tribunal Member: S Coughlin  
MCIEH**

**Date and venue of hearing** : **16 January 2023 decided on the papers at 10 Alfred Place, London WC1E 7LR**

**Date of decision** : **16 January 2023**

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**DECISION**

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### **Decision of the Tribunal:**

**The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of repairs works to replace the drive to the passenger lift in the Property.**

### **The application:**

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of works to the Property required to replace the a drive in the passenger lift at the Property.

### **Hearing:**

2. The parties did not request a hearing and so the matter was dealt with on the papers.

### **Background**

3. The Property comprises a building constructed in 2005 comprising 5 storeys above ground and one basement level. There are 15 residential flats with one commercial unit on the ground and basement floor.
4. The Applicant is the Right Manage Company who is represented by the managing agents of the Property.
5. The Applicant claims that the lift is out of service and it has been confirmed by the manufacturer and maintenance provider, Schindler, that a new drive is required to repair the lift.

### **Directions:**

6. The tribunal issued directions on the 6 October 2022 providing for the leaseholders to be notified of the application and given an opportunity to respond to the application. The tribunal received no responses from the leaseholders.

### **Inspection:**

7. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party. The tribunal did not consider an inspection to be necessary or proportionate to the issue.

### **The Applicant's Case:**

8. The Applicant's case is set out in the application and supporting documents.
9. The Applicant has produced a sample copy of the lease relating to the flats at the property.
10. The Applicant has confirmed that they have obtained 3 quotes for the works as follows:
  - a. Schindler Lifts £6295.00 +vat
  - b. Principle Lifts £36,000.00 +vat,
  - c. Emerald Elevators £14,666.00 +vat.
11. A copy of the lease dated 25 April 2005 in relation to Flat 7 has been produced as a sample lease. The lease requires that the landlord ensures that every lease of any other the flat in the Building is in a similar form as the sample lease and contains similar covenants and similar obligations. On this basis, I am satisfied that although the leases of all the flats in the property might not be identical they will be in a substantially similar form. The sample lease provides for the landlord to maintain, repair and renew inter alia the Lift and to keep it in good and substantial order and repair, and for the leaseholders to contribute towards the cost of such works by way of a service charge as per the provisions of their respective leases.

### **The Respondent's Case:**

12. The Application and the Directions were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

### **The Law:**

13. s. 20 of the 1985 Act provides that:

*“(1) Where this section applies to any qualifying works....., 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) a leasehold valuation tribunal.”*

14. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to

those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) the tribunal.

15. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

16. s. 20ZA of the 1985 Act provides:

*"(1) 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."*

17. Under Section 20ZA(1) of the 1985 Act, "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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

### **The Tribunal's decision:**

18. The Supreme Court's decision in the case of Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.

19. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.

20. The tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.

21. The burden is on the Applicant in seeking a dispensation from the consultation requirements. However the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered as a result of the lack of consultation.
22. The tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
23. The tribunal is satisfied that the works were of an urgent nature given that there is only one lift serving the flats, vulnerable people are residing on the upper floors who require the use of the lift in order to gain access to and from their property and if the works were not undertaken there was a potential of damage to the health and well being of these residents.
24. The tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The tribunal noted that none of the leaseholders had objected to the grant of dispensation.
25. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal noted that the managing agent had not obtained an independent report from an expert, the leaseholders have not had the chance to nominate a contractor of their choice and the works had not been put out to tender so the tribunal cannot be sure that the cost of the works are reasonable.
26. The tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information. On 8 September 2021 a s.20 Notice of Intention was served on the leaseholders and following this a Notice of Estimates was served on 16 September detailing two estimates. The works were carried out on 22 September. In view of the urgent nature of the works and the circumstances under which the works became necessary the tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, have suffered any significant relevant prejudice.
27. The tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the tribunal makes an order that the consultation requirements are dispensed with respect of the replacement of the drive to the lift
28. This application relates solely to the granting of dispensation. If, when they are charged, the leaseholders wish to contest the reasonableness of the costs, or otherwise to challenge the charge, then it remains open to them to

apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985

**Name:** Judge N Haria

**Date:** 16 January 2023

### APPENDIX

Unit	Leaseholder
01	Mr P Chater & Ms F.Jade
02	Harvey Scott James
03	Chee E & Vincent G Davis
04	Dennis Baker & Charlotte Stiffel
05	Catriona Elizabeth Paterson
06	Mr & Mrs D Verma
07	Ghanshyam & Chirag Patel
08	Mr R Rinaidi & Ms F Turitto
09	Miss Alexandra R Z Chen
10	Ms M Bradfield
11	Mr Richard Andrew
12	Mr & Mrs W Roberts Flat
13	Mr Cameron Anthony Richards
14	Trade In Options Limited
16	Latoya Telicia Saint Hilaire
Commercial	Barrow Stores investments Ltd

## **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).