



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

**Case reference** : **LON/00AN/LDC/2024/0044**

**Property** : **Aspect Court, Fountain House & Courtyard House, Imperial Wharf, The Boulevard, Lensbury Avenue, London, SW6**

**Applicant** : **Berkeley Seventy-Seven Limited**

**Representative** : **Rendall and Rittner (Ms Sophie Green)**

**Respondents** : **154 Leaseholders of Aspect Court, Fountain House and Courtyard House**

**Type of application** : **Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**

**Tribunal member** : **Judge Robert Latham**

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

**Date of decision** : **27 June 2024**

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**DECISION**

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The Tribunal grants this application to dispense with Stage 2 of the statutory consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 as it is apparent that the work can only be executed by Otis because the lifts use a closed protocol system. The Applicant intends to serve a modified Stage 3 Notice about Estimates.

## **The Application**

1. On 13 April 2024, the Applicant, applied for dispensation from the statutory duty to consult in respect of works to upgrade two lifts. The estimated cost of the works is £107,382 +VAT. The Respondents are 154 Leaseholders of Aspect Court, Fountain House and Courtyard House whose names have been provided to the Tribunal. The Applicant provided a copy of the lease for “Plot 291 Imperial Wharf (Block C)”.
2. Aspect Court is a general needs 14-storey purpose-built residential block of flats with 68 flats. This property has adjoining blocks and Fountain Centre on the ground and first floors, which runs under Aspect Court, Fountain House and Courtyard House. The height of the building to the uppermost occupied floor level is approximately 39m. The development has an individual core, providing individual entrances and exits to the flats.
3. On 6 November 2023, the Applicant obtained a report from Otis. Otis recommended the modernisation of the two lifts based on their “GeN3 Plus Upgrade Package” at a cost of £107,382 + VAT.
4. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) requires a landlord to consult in respect of “qualifying works” where the relevant contribution of any lessee will exceed £250. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants’ association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any

nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

5. On 9 January 2023, the Applicant served a Stage 1: Notice of Intention on the leaseholders informing them of their proposal to upgrade the two lifts. The Notice stated that due to their age and conditioning of the mechanics, a full upgraded was required. A further factor was that parts necessary to maintain the lifts had become obsolete. The leaseholders were asked to make any observations on this proposal by 13 February. The leaseholders were also invited to nominate a contractor from whom an estimate should be sought.
6. In their application, the Applicant states that the landlord had approached Otis and Jackson Lifts for estimates. Jackson Lifts have declined to submit a proposal since only Otis can price for the works required, because the lifts use a closed protocol system. The Applicant seeks dispensation of the requirement to seek a second estimate. It proposes to send a modified Stage 3: Notice about Estimates to the leaseholders providing details of the one quote received and give a period of 7 days for any observations to be made. It is said that the works are urgent as there is a threat to the lives and safety of the leaseholders.
7. On 4 March 2024, the Tribunal issued Directions. The Directions stated that the Tribunal would determine the application on the papers, unless any party requested an oral hearing. No party has done so.
8. By 11 March 2024, the Applicant was directed to send to the leaseholders (and any residential sublessees) and any recognised residents' association, by email, hand delivery or first-class post: (i) copies of the application form (excluding any list of respondents' names and addresses) unless already sent by the applicant to the leaseholder/sublessee; (ii) if not already provided in the application, a brief statement to explain the reasons for the application; and (iii) the directions. The Applicant was further directed to display a copy of these in a prominent place in the common parts of the property. On 16 May 2024, the Applicant confirmed that it had complied with this Direction.
9. By 22 March 2024, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions

and send it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the Applicant a statement in response to the application. No leaseholder has returned a completed Reply Form opposing the application.

10. The Applicant has provided a Bundle of Documents (41 pages) in support of the application.
11. On 24 April 2024, the application was placed before Judge Percival for determination on the papers. He felt unable to determine the application on the basis of the papers provided and issued further Directions.
12. On 16 May 2024, the Applicant confirmed the two lifts in Aspect Court will undergo upgrades. The reason for this is the noisy break mechanism in the firefighting lift. While only one lift has a noisy part, both lifts need upgrading because they operate in tandem, and the noisy mechanism is now obsolete. Despite being operational, the lifts generate noise during operation, necessitating the upgrades. The lifts are also reaching an age where a full upgrade is due, especially now spare parts are becoming obsolete.
13. The Applicant also confirmed that the contract with Otis is 12 months in duration, and therefore is not a qualifying long term agreement for the purposes of the Act.
14. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate 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.”
15. **The only issue which this Tribunal has been required to determine is whether or not 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.**
16. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. It is apparent that the work can only be executed by Otis because the lifts use a closed protocol system. No leaseholder has opposed the application.
17. The Directions make provision for the service of the Tribunal’s decision. The Tribunal will email a copy of its decision to the Applicant.

The Applicant is responsible for serving a copy of the Tribunal's decision on the Respondents.

**Judge Robert Latham**

**27 June 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 **by e-mail** 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).