FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BA/LDC/2024/0126**
Hearing Type	**:**	**By Way of Written Representations**
Property	**:**	**Woodside House, Woodside, Wimbledon, London SW19 7QN**
Applicant	**:**	**Hilling Drive Ltd (Landlord)**
Respondents	**:**	**Nerys Avery (Flat 39)** **Varsha Jain (Flat 1)** **Shobhit Maini (Flat 41)** **Alexandra Anders and** **Valentina Spinelli (both of Flat 10) (Tenants)**
Type of Application	**:**	**For dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985**
Tribunal Member	**:**	**Mr J A Naylor FRICS, FIRPM** **Valuer Chairman**
Date of Decision	**:**	**15 July 2024**

DETERMINATION

DECISION

Dispensation is granted unconditionally.

REASONS

Background

1. A dispensation application was received from the Applicants dated 30 April 2024.

2. On 20 May 2024 the Tribunal issued directions to both the Applicant and the Respondents asking that those Leaseholder Respondents who wished to oppose the application did so by 17 June 2024. Ther Applicant was to reply to any submissions by the Respondents by 24 June 2024 and subsequently prepare a bundle and provide this to the Tribunal by 1st July 2024.

3. By way of an email dated 30 June 2024 Sarah Spalding on behalf of the Applicant corresponded with the Tribunal confirming that she had copied all Respondents into the initial documents on 4th April 2024 and sent reminders that they needed to send any objection they had to the tribunal .

4. Sarah Spalding has confirmed that no reply forms or statements have been received.

5. In this case the Applicant seeks dispensation from the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985. The Applicant is Hilling Drive Ltd, the freehold owner of the property and the Respondents are four leaseholders within the property.

6. The premises comprise two purpose built blocks of flats believed to have been constructed in the 1930s and each comprising twenty eight flats . Fifty six flats in total flats.

7. Each individual block has a lift.

8. Dispensation is sought to undertake work to the lift in Block B.

9. The work is considered urgent by the Applicants who state that it no longer provides a satisfactory service as equipment breaks down on an almost weekly basis causing difficulty to any vulnerable individuals within the block and creating an unnecessary financial burden as a result of the continuing cost of repair and call-out.

10. The Applicants advise that a letter was sent out to all Leaseholders on 31 July 2023. This did not state that it was a notice of intention however but did outline the intention to refurbish the lifts in February 2024.

11. In their application the Applicants advised that they have consulted with various lift consultants.

12. They originally appointed J Bashford in June 2019 and his advice was that the lifts should be replaced. Due to Covid restrictions and subsequent delays, Mr Bashford had retired by the time he was next consulted. The matter was then referred to Butler & Young in April 2022 but on consultation the Applicants felt that Butler & Young were unable to provide a solution to the improper use of the lift.

13. They then advise that they approached three more lift consultants and Ardent Lift Consultants were chosen to proceed with the project. They subsequently found that the replacement of the lift was not a viable alternative to repar due to site restrictions.

14. Six contractors have been invited to tender and three have provided quotes.

15. Amalgamated Lifts have been chosen as a contractor with Ardent Lift Consultants Ltd to act in a supervisory role .

16. The Applicants advise that they have undertaken some consultation. The first was their initial letter advising of their intention ,but not constituting a formal letter of Intention ,dated 31st July 2023.

17. They then issued a Section 20 Notice on 15 January 2024 and the Leaseholders were given until 16 February 2024 to make observations. The directors then sent a letter dated 29 February 2024 to all Leaseholders addressing all the questions that had arisen in the consultation process. On 26 February 2024 Nerys Avery of Flat 39 challenged the process and requested a meeting of shareholders.

18. The Applicants have confirmed that a meeting took place on 26 March 2024 and that the shareholders were specifically asked to approve the decision to refurbish the lifts as outlined in the Section 20 documents that they had received.

19. The Applicants advise that this Resolution was passed unanimously.

20. Within the bundle of documents provided is an email from Dan Cheeseman responding to questions raised by Rafi Shan. This provides detailed answers to a number of enquiries. It is not necessary to go into the detail of this

correspondence here ,save to acknowledge a detailed engagement and response to queries raised .

21. The Applicants acknowledge that they could undertake a fresh Section 20 consultation process but in the alternative seek dispensation from compensation in order to move the project of lift replacement forward as quickly as possible.

22. No correspondence from the Respondent has been received at the Tribunal nor was there a response to the reply form issued to the Respondents with the Tribunal directions.

Determination

23. The application for dispensation appears to have merit.

24. The Tribunal is mindful of the fact that consideration for refurbishment/ replacement of the lifts began in 2019 and that the lifts remain in place at the date of application. Nevertheless, the Tribunal does have before it evidence that the difficulties with the lifts are occurring on a more frequent basis and that the lack of lift can be severely detrimental to the occupiers of the blocks of flats particularly if it contains vulnerable individuals.

25. The Tribunal is of the opinion that the Applicants have made considerable effort to determine precisely what may be required to rectify the defects and have looked into a number of possibilities employing various consultants to advise them. It appears that they have also made a considerable effort to obtain competitive tenders and to ensure that any work is completed under supervision.

26. No evidence has been provided or given by the Respondents nor do we have any submissions from them.

27. There is no evidence of prejudice suffered by the residents and accordingly the Tribunal agrees to give a dispensation unconditionally. It is emphasised that the dispensation does not affect the Leaseholders ability to challenge the services charges pursuant to Section 27(a) of the Landlord and Tenant Act 1985.

The Law

Landlord & Tenant Act 1985, s.20ZA

20ZA Consultation requirements: supplementary

(1) 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.

(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.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Daejan

In Daejan Investments v Benson [2013] UKSC 14, the landlord was the freehold owner of a building comprised of shops and seven flats, five of which were held by the tenants under long leases which provided for the payment of service charges.

The landlord gave the tenants notice of its intention to carry out major works to the building. It obtained four priced tenders for the work, each in excess of £400,000, but then proceeded to award the work to one of the tenderers without having given tenants a summary of the observations it had received in relation to the proposed works or having made the estimates available for inspection.

The tenants applied to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985 , as inserted, for a determination as to the amount of service charge which was payable, contending inter alia that the failure of the landlord to provide a summary of the observations or to make the estimates available for inspection was in breach of the statutory consultation requirements in paragraph 4(5) of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to limit recovery from the tenants to £250 per tenant, as specified in section 20 of the 1985 Act and regulation 6 of the 2003 Regulations in cases where a landlord had neither met, nor been exempted from, the statutory consultation requirements.

The landlord applied to the tribunal under section 20(1) of the Act for an order that the paragraph 4(5) consultation requirements be dispensed with, and proposed a deduction of £50,000 from the cost of the works as compensation for any prejudice suffered by the tenants, which offer they refused. The tribunal held that the breach of the consultation requirements had caused significant prejudice to the tenants, that the proposed deduction did not alter the existence of that prejudice, and that it was not reasonable within section 20ZA(1) of the Act, as inserted, to dispense with the consultation

requirements.

The Upper Tribunal (Lands Chamber) dismissed the landlord's appeal and the Court of Appeal upheld the Upper Tribunal's decision.

The Supreme Court , allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 , was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms. Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC. (i) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted (post, para 45). (ii) Any concern that a landlord could buy its way out of having failed to comply with the consultation requirements is answered by the significant disadvantages which it would face if it fails to comply with the requirements.

The landlord would have to pay its own costs of an application to the leasehold valuation tribunal for a dispensation, to pay the tenants' reasonable costs in connection of investigating and challenging that application, and to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal would adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue (post, para 73).

Lord Neuberger giving the leading judgment stated inter alia the following:

More detailed consideration of the circumstances in which the jurisdiction can be invoked confirms this conclusion. It is clear that a landlord may ask for a dispensation in advance. The most obvious cases would be where it was necessary to carry out some works very urgently, or where it only became apparent that it was necessary to carry out some works while contractors were already on site carrying out other work. In such cases, it would be odd if, for instance, the LVT could not dispense with the requirements on terms which required the landlord, for instance, (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example) five days instead of 30 days for the tenants to reply.

Name: Mr J A Naylor FRICS FIRPM .

Date: 16 July 2024.

ANNEX – 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 might 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 this 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. Any appeal in respect of the Housing Act 1988 should be on a point of law.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).