FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LDC/2024/0117**
Hearing type	**:**	**By way of paper representations**
Applicant	**:**	**East End Homes Ltd**
Respondent	**:**	**The Leaseholds of Loweswater House**
Property	**:**	**Loweswater House, Southern Grove, London E3 4PY**
Type of Application	**:**	**To dispense with the statutory consultation requirements under Section 20ZA of the Landlord and Tenant Act 1985.**
Date of decision	**:**	**5 August 2024**
Tribunal member	**:**	**Mr J A Naylor FRICS FIRPM Valuer Chairman**

DECISION
DETERMINATION

Dispensation is granted unconditionally.

REASONS

The Tribunal grants the application for dispensation from further statutory consultation in respect of the subject works, namely: the repair of a control panel and associated asbestos works within a lift.

The Applicants should place a copy of this decision, together with an explanation of the Leaseholder's appeal rights, on its website (if any) and within the common parts of the property within seven days of receipt, and maintain it there for at least three months, with a sufficiently prominent link to both on its homepage.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under Section 27A of the Act in respect of the reasonableness and/or the cost of the work.

Background

1. An application for dispensation dated 17th April 2024 was received by the Tribunal.

2. This application was made under Section 20ZA of the Landlord and Tenants Act 1985 and was an application for dispensation from all or any of the consultation requirements provided by Section 20 of the Landlord and Tenants Act 1985.

3. On 12th June 2024 the Tribunal issued directions.

4. The directions stated that by 26th June 2024 the Applicants need to confirm that all Leaseholders had been notified of the dispensation application.

5. This confirmation was received by the Tribunal in an email dated 31st July 2024, in which the Applicants confirmed that all leaseholders had received notification of the dispensation application, on 20th June 2024. The Tribunal has received a copy of this communication and understand that it has been displayed in the common areas.

6. The Tribunal directions stated that the Leaseholds who wanted to oppose the application needed to do so by 10th July 2024 and that the landlord's statement in reply thereto was to be made by 17th July 2024.

Applicant's case

1. East End Homes Limited (Landlord) have made an application for dispensation.

2. The case for the application is made within the application form itself and the Tribunal has also been provided with a witness statement.

3. The case made on behalf of the Applicants is as follows:

Loweswater House is a 10-storey block serviced by two stairwells and two lifts.

The lifts are believed to have been installed circa 1972 to 1975, and have now been in situ for in excess of 50 years.

The design life of the lifts is understood to be between 30 and 40 years, and in the recent past the lifts have continued to give problems and break down more often. Parts are becoming increasingly difficult to obtain.

In 2013, a partnering agreement with Lift Technical Services Limited was entered into, whereby Lift Technical Services Limited were contracted to undertake repairs and improvements to the lifts. This agreement remains in place.

Following a visit to the block, it has been determined that the control panel in one of the lifts needs replacement and that to facilitate this work, it will be necessary to disturb some asbestos insulation.

Lift Technical Services Limited have provided a quote to undertake the work, estimated at £61,000 plus VAT, approximately £1,255 per flat.

The Applicants, in response to Leaseholders, have advised that work to replace the lifts is not likely to be undertaken until a full refurbishment of the block is completed, and the timeframe that has been given for this is two years.

Their application is on the basis that they are concerned that failure to the second lift will leave those with children, the elderly and vulnerable tenants within the block without a lift service, but that the proposed work to one lift will prolong its life to a sufficient length that there will be sufficient time for replacement to take place.

Respondent's case

4. Only two responses have been received following issue of the notice seeking dispensation.

5. The Leaseholder of Flat 2 has objected on a number of grounds.

The first concern is that the application is not in respect of all flats. The Leaseholder of Flat 2 also believes that the work could have been budgeted for over a number of years and completed within the planned maintenance programme before now, and is concerned that the work does not seem sufficient to ensure the extended life that the Applicants suggest.

The second objection was later received from the Leaseholder of Flat 1.

They advise that they did not get the initial information from East End Homes Limited, but also states that it would have been a preferable approach for the Applicants to collect monies over a period of time, and that this would have been possible had the situation been monitored more thoroughly. They also state that there are some figures within the breakdown that they do not understand and that not all properties were included in the notification process.

Response by Applicants

6. The Applicants replied to the issue of consultation to both the first and second Respondent, explaining how this has been done.

In an email dated 31st July, they confirm that these works could not have been foreseen and that they do not provide for a sinking fund within their budgeting. The Applicants specifically point out that this is maintenance work and can only be undertaken by the contracted lift maintenance engineers, therefore, but that a full consultation and tendering process will be undertaken for the lift replacement.

Determination and Reasons

7. Section 20ZA(1) of the Act provides:

"*Where an application is made to the First Tier Tribunal Property Chamber 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.*"

The purpose of Section 20ZA is to permit a landlord to dispense with the consultation requirements of Section 20 of the Act if the Tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively. There is no evidence before the Tribunal that the Respondents would be prejudiced by the failure of the Applicants to complete the consultation requirements, nor is there any evidence before the Tribunal that any of the Respondents' objections have not been addressed.

The Tribunal is of the opinion that the defect described is sufficient to warrant urgent remedial action and it is satisfied, therefore, that, on balance and taking into account the consequences of further failure, it is reasonable to dispense with all or any of the consultation requirements in relation to the repair of the lifts.

Whether the works have been carried out to a reasonable standard, and at a reasonable cost, are not matters which fall within the jurisdiction of the Tribunal in relation to this present application. This decision does not affect the Tribunal's jurisdiction upon any future application to

make a determination under Section 27A of the Act, in respect of the reasonableness and oblige or cost of the works.

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 bereduced 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: 5th August 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).