FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LDC/2024/0118**
HMCTS code	**:**	**P: PAPERREMOTE**
Property	**:**	**The Point, 3 Alton Road, London, SW15 4LF**
Applicant	**:**	**Alton Road Investments Limited**
Respondents	**:**	**The leaseholders listed in the schedule to the application**
Type of application	**:**	**To dispense with the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. A Fonka MCIEH CEnvH MSc**
Venue of hearing	**:**	**10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**24 June 2024**

DECISION

DECISION

The Tribunal grants the application for unconditional retrospective dispensation from statutory consultation in respect of the subject works, namely works to the lift in The Point, 3 Alton Road, London, SW15 4LF (as detailed in the quotation from Schindler dated 10 April 2024), which commenced on or about 15 April 2024, at a cost of £2,991.94 (inclusive of VAT).

The Applicant should place a copy of this decision together with an explanation of the leaseholder's appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent place in the common parts of the Property.

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 cost of the work.

References are to page numbers in the bundles provided for the hearing.

The Application – p.1

1. The Applicant has applied for dispensation from the statutory consultation requirements. The application was made before the works were carried out, but, by the time the Tribunal has considered the application, the date proposed for the works has passed.

2. The Point, 3 Alton Road, London SW15 4LF ("The Point") is a 13-unit purpose-built residential block of flats, from basement level to third floor, with a lit to access each floor. There is a gated car park area at the rear and a small communal garden.

3. The application explains that the lift has been out of access due to the emergency passenger release failing, along with the door control module. There are elderly residents who struggle to use the stairs. The lift was said not to be safe to be put back into action until the safety works were carried out.

4. The lift repairs were said to be as follows: replacement emergency battery pack x 2 (Fermator module VVVF4 with VVVF5). It is explained that the emergency passenger release batteries no longer hold charge (and they are imperative to enable a trained person to release passenger(s)) and that in the event of a power failure, if the batteries were not charged, passengers could not be released. It

was proposed the works would be carried out in the week commencing 15 April 2024.

5. It is said that no consultation was carried out due to the application to the Tribunal as works were urgently required. It is said that all leaseholders had been advised by email on 11 April 2024 that the Applicant was seeking dispensation. It is said that the safety elements of the lift, which served all floors in the building, had failed, leaving the lift out of service, that the lift has been out of action due to the emergency passenger release failing, along with the door control module, and there are elderly residents who struggle to use stairs. Pursuant to the Sixth Schedule of the Lease, point 6, the Applicant has a duty of care to ensure all electro-mechanical apparatus are in full, safe, working order.

6. The application is dated 12 April 2024.

7. The application attaches as letter from Curchod & Co (Chartered Surveyors and Property Consultants) dated 12 June 2024 (p.107), which states that the application has been made due to the lifting failing in health and safety areas. It is said that the failure was reported to them along with the door control module (it had failed). The lift was out of service. It is said that it was felt necessary to have the works caried out as a matter of urgency as there were elderly residents in the building who cannot manage the stairs.

8. There is also a e-Worksheet dated 10 April 2024 (p.108) confirming that the Schindler engineer who had attended on 9 April 2024 had found a problem with the equipment – electronic components were worn out. The equipment was not put back in service. It is noted that the door control had failed and a new one was required.

9. There is also a quotation for the works needed (p.109), from Curchod & Co, in the sum of £2,991.94.

10. By the order of dated 15 May 2024 (p.114) the Tribunal identified that the only issue for the Tribunal was whether it was reasonable to dispense with the statutory consultation requirements. It was made clear that the application did not concern the issue of whether any service charge costs would be reasonable or payable, or the possible application of the Building Safety Act 2022.

11. The order provided, among other things:

    (a) By 22 May 2024, the Applicant had to send to the leaseholders (and any residential sublessees) and to any recognised residents' associations, copies of the application form, a brief statement to explain the reasons for the application (if not already detailed), these directions and display a copy of those documents in a prominent place in the common parts;

(b) Any leaseholders or sublessees who opposed the application were to respond by 5 June 2024.

12. It was provided that the application would be determined on paper unless there was a request from either party for a hearing to be held. No such request has been made.

13. On 21 May 2024, the Applicant confirmed to the Tribunal that it had complied with the directions (p.112). A copy of the application, along with a copy of the directions, was sent to the leaseholders on 20 May 2024.

14. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250.

The Lease – p.14, p.60

15. One of the Leases for one of the flats in The Point has been provided. It is dated 30 May 2014 and was between the Applicant and Tine Lesley Smith (one of the Respondents). It is in respect of Flat 1, Alton Road, London, SW15 4LF, which is a basement flat described in the Third Schedule. It lets Flat 1 to Ms. Smith for 155 years from 25 December 2013.

16. It defines "the Building" as the building or buildings forming part of the Development. "The Common Parts" are defined as all internal areas of the Building which are from time to time at the Landlord's discretion used or intended to be used in common by Tenants or owners or two or more of the Properties as the same are more particularly described in Part III of the Second Schedule hereto – this includes "the lift". "The Communal Areas and Facilities" are defined as the Accessways grounds gardens landscaped areas and all other areas forming part of the Development which are used or intended for use in the common by the Tenants or owners or occupiers of two or more of the Properties as the same are more particularly described in Part I of the Second Schedule. "The Demised Premises" are defined as the property specified in prescribed clause LR4 and described in the Third Schedule. "The Development' is defined as the land with buildings or structures erected thereon and more particularly described in the First Schedule. "The Flats" are defined as the private flats within the Development and "Flat" shall be construed accordingly. "The Properties" means the flats within the development. The "Maintained Property" means those part of the Development more particularly described in Part IV of the Second Schedule – which includes the Common Parts. The "Maintenance Expenses" means the costs incurred in accordance with the Landlord's obligations contained in Part I, II and III of the Sixth Schedule and such parts of Part IV of the Sixth Schedule as are applicable.

17. The Lease provides that "the Tenant's Proportion" is 8.73% of the costs incurred in the Sixth Schedule and in respect of the Maintenance Expenses payable by the Tenant in accordance with the provision of the Seventh Schedule. There is a "Tenant's Added Lift Proportion" which is 11.21% of the costs incurred in Part V of the Sixth Schedule in relation to the repair and maintenance of the Lift also payable by the Tenant in accordance with the provisions of the Seventh Schedule.

18. Clause 2 obliges the tenant to pay the Tenant's Proportion). The Sixth Schedule sets out, at Part I, the "Internal Costs of the Building" which includes:

> (a) Inspecting, repairing, maintaining, resurfacing, rebuilding, repainting, renewing, replacing, cleaning, redecorating or otherwise treating the Common Parts and all other parts of the Maintained Property forming part of the Building which are properly attributable to this Part I so often as in the opinion of the Landlord it shall be reasonable necessary;
>
> (b) Repairing, maintaining, inspecting and as necessary reinstating or renewing the Service Installations forming part of the Common Parts.

19. Clause 4 sets out the Landlord's Covenants, which include performance of the obligations in Parts I, II and III of the Sixth Schedule and the Ninth Schedule.

20. The Sixth Schedule includes the following: Part I provides for inspecting, maintain, renting, renewing, reinstating, replacing and insuring all or any of the electro-mechanical apparatus as the Landlord may from time to time consider reasonably necessary or desirable for the carrying out of the acts and things mentioned in the Schedule.

21. Part II sets out the "Costs of the Building", which includes inspecting, repairing, maintaining, resurfacing, rebuilding, repainting, renewing, replacing, cleaning, decorating and otherwise treating the Main Structure and all other parts of the Maintained Property forming part of the Building which are properly attributable to this Part II so often as in the opinion of the Landlord it shall be reasonable necessary. The Development costs are defined by Part III, which includes inspecting, repairing, (and where beyond economic repair) renewing, rebuilding and replacing, maintaining, resurfacing, repainting, cleaning, redecorating, lighting and otherwise treating the Communal Areas and Facilities so often as shall be reasonably necessary.

22. Part V of the Sixth Schedule sets out the costs of maintenance and repair of the Lift.

23. There appears to be a page missing from the end of the Lease, part of the Ninth Schedule.

24. There is another Lease (p.60), dated 13 June 2014, in respect of Flat 4, "The Point", Alton Road, London, SW15 4LF. It is dated 30 May 2014 and was between the Applicant and Jessica Frances Morgan (who is not one of the Respondents – the application gives Mr. and Mrs. L. Vilda as the leaseholder of this property). Flat 4 is a ground floor flat described in the Third Schedule. It lets Flat 4 to Ms. Morgan for 155 years from 25 December 2013.

25. The terms are as set out above, save for the following.

26. The Lease provides that "the Tenant's Proportion" is 7.17% of the costs incurred in the Sixth Schedule and in respect of the Maintenance Expenses payable by the Tenant in accordance with the provision of the Seventh Schedule.

27. The Ninth Schedule sets out the covenants on the part of the Landlord, which includes carrying out the works and doing the acts and things set out in the Sixth Schedule as appropriate, save as provided.

28. As part of the application, but not included in the bundle, the Applicant has also provided the Leases for some of the other Flats.

Documentation

29. The Applicant has provided a bundle of documents, comprising a total of 120 pages.

The Respondents' case

30. No objection has been received from the leaseholders. By letter dated 12 June 2024 (p.113) Curchod & Co confirmed that neither they, nor the Applicant, had received any correspondence in respect of the application for dispensation.

Law

31. Section 20ZA(1) of Landlord and Tenant Act 1985 provides:
"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."

32. The whole 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, as it has been made here.

33. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 in reaching its decision. In that case, in summary the Supreme Court noted the following:

(a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements;

(b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

(c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

(d) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

(e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).

(f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

(g) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

(h) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

(i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Determination and Reasons

34. It is important to note that, the only issue for the Tribunal, in terms of this application, is whether it is reasonable to dispense with the statutory consultation requirements.

35. The Tribunal finds as follows:

36. (1) The Applicant did not comply with the consultation requirements, but as stated in *Daejan*, dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

37. (2) The Tribunal takes into account that these were urgent works – a 13-unit purpose-built residential block of flats, from basement level to third floor, with a lit to access each floor. There are elderly residents who cannot manage the stairs.

38. (3) No objection has been raised by the Respondents.

39. (4) 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, but it is noted that no issue is raised by the Respondents as to the works carried out. 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 costs of the work.

40. (5) It is not the case that non-compliance with s.20 has caused prejudice to the Respondents.

41. The Tribunal is therefore satisfied that it is reasonable to grant unconditional dispensation in respect of all or any of the consultation requirements in relation to the subject works.

Costs

42. The Tribunal has not been asked to make an order for costs.

Judge Sarah McKeown
24 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 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)