



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

**Case reference** : **LON/00AG/LDC/2024/0090**

**Property** : **106-110 (even) Kentish Town Road and  
335-341 (odd) Royal College Street  
(formerly known as Dunn's Hat  
Factory)**

**Applicant** : **(1) British Overseas Bank  
Nominees Ltd  
(2) WGTC Nominees Ltd  
As trustees for and on behalf of NatWest  
Trustee and Depositary Services Ltd as  
Trustee of the St James Place Property  
Unit Trust**

**Representative** : **DLA Piper**

**Respondents** : **(1) Camden Place Leaseholders  
Ltd  
(2) The leaseholders named in the  
schedule attached to the  
Application.**

**Representative** : **Ringley Limited**

**Type of application** : **For dispensation from the statutory  
consultation requirements under  
section 20ZA Landlord and Tenant Act  
1985.**

**Tribunal** : **Judge N O'Brien**

**Date of decision** : **20 November 2024**

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**DECISION**

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### **Decisions of the tribunal**

1. The Tribunal unconditionally grants the application for retrospective dispensation from the statutory consultation requirements in respect of the subject works namely lift replacement works and repair and fireproofing works to internal fire doors more particularly described in the documents included in the bundle supplied by the Applicant.
2. **This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Landlord and Tenant Act 1985 in respect of liability to pay (for a reason other than non-compliance with the statutory consultation requirements) in respect of the subject works and/or the reasonableness and/or the cost of the same.**

### **The Application**

3. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant act 1985 (LTA 1985) for dispensation from the consultation requirements in respect of works to the subject premises. The premises consist of a converted hat factory in Camden. The basement to fourth floor consist of commercial premises and the 5<sup>th</sup> and 6<sup>th</sup> floors consist of 14 residential leasehold flats. The First Respondent holds a 999-year lease of the 5<sup>th</sup> and 6<sup>th</sup> floor and the remaining Respondents named in the schedule to the application are the leasehold owners of the 14 flats. The works are described in the application as replacement of the two lifts in the building and additional fireproofing works to existing fire doors. The Applicant's case is essentially that it did not comply with the consultation requirements due to the urgency of the works and the long lead time in respect of the lift works.
4. By directions dated 12 September 2024 the Tribunal directed that the Applicant should, by 26 September 2024, send to the leaseholder and the residential sub-lessees and any recognised tenants association the application and the directions and affix them to a prominent place in the common parts of the property, and confirm to the Tribunal that this had been done by 1 October 2024 . The Applicant confirmed by email sent on 1 October 2024 that those directions had been complied with.
5. The directions provided that if any leaseholder or sublessee objected to the application, he or she should inform the Applicant and the Tribunal by 10th of October 2024, with any reply to be filed and served by 17 October. The Tribunal received an objection to the application from Ringley Limited, the managing agents acting for the First Respondent. The Applicant served a brief reply.
6. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. Both parties have indicated that they are content for the matter to be considered on the papers without a hearing.

## **Legal Framework**

7. The Service Charges (Consultation Requirements)(England) Regulations 2003 set out the consultation process which a landlord must follow in respect of works which will result in any leaseholder contributing more than £250 towards the cost. In summary they require the Landlord to follow a three-stage process before commencing the works. Firstly the Landlord must send each leaseholder a notice of intention to carry out the works and give the leaseholders 30 days to respond. Then the Landlord must send out details of any estimates and permit a further 30-day period for observations. Then, if the landlord does not contract with a contractor nominated by the leaseholders or does not contract with the contractor who has supplied the lowest estimate, it must service notice explaining why.

8. Section 20ZA of the LTA 1985 provides:

*“Where an application is made to the appropriate tribunal for a determination to dispense with any or all 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”.*

9. In *Dejan Investments Ltd v Benson and others [2013] UKSC 14* the Supreme Court held that in any application for dispensation under s20ZA of LTA 1985 the Tribunal should focus on the extent, if any, to which the leaseholders are or would be prejudiced by either paying for inappropriate works or paying more than would be reasonable as a result of the failure by the landlord to comply with the Regulations. The evidential burden of identifying relevant prejudice lies on the tenants but once they have raised a credible case of prejudice, the burden is then on the landlord/applicant to rebut it.

## **The Applicant’s Case**

10. In its grounds the Applicant states that the two lifts serving the building are over 20 years old. In 2023 the Applicant instructed MAPP LLP to investigate whether the lifts required remedial works and whether they complied with current fire safety regulations. A copy of a report prepared by SVM Associates Ltd which was initially dated April 2023 but appears to have been revised on 22 October 2023 is included in the bundle. The report included in the bundle concludes that the firefighter’s lift in the building did not comply with current regulations. It recommended that the lift be replaced. It does not comment on the condition of the second lift. In its grounds the Applicant states that MAPP LLP recommended that Lift 1 be replaced and that the other be modernised due to it reaching the end of its life cycle. In October 2023 the Applicant sought quotes for the works from four contractors. The most competitive quote was submitted by Elan Lifts Limited in the sum of £289,376. The highest of

the four quotes was from Amalgamated Lifts Ltd for a total cost of £542,112.

11. The Applicant's case is that it proceeded to instruct Elan Lifts Ltd in November 2023. Elan Lifts Ltd recommended that the second lift could be replaced rather than refurbished for an additional £22,970. The Applicant explains that it decided that a full replacement would be best for the second lift, rather than refurbishment of the existing lift which by they were over 20 years old and was considered by MAPP Ltd to be nearing the end of its lifecycle.
12. The Applicant's case is that that there is a significant lead time between selecting a contractor and installation. Elan Lifts Ltd produced the specification in January 2024 and the order was placed in April 2024. Works did not commence until August 2024. The Applicant states in its application that this is in part due to the fact that lift contractors do not operate during the summer months.
13. In essence the Applicant's case is that dispensation should be granted because the works were urgent as the lifts posed a fire safety risk to residents and that given the lengthy design process it was necessary to instruct the contractor as soon as the need for the works became apparent in October 2023.
14. The Applicant further submits that by obtaining tenders from four potential lift contractors they ensured that no prejudice was caused to the Leaseholders.
15. The second category of works are works to the internal fire doors of the building. The Applicant has included a number of individual surveys of the internal fire doors in the bundle. The Applicant obtained three estimates for the works ranging from £54,669 to £63,898 which were emailed by MAPP LLP to the First Respondent's agent/representatives on 28 March 2023 for their comments. The email stated that the Applicant was not proposing to follow the s.20 consultation process. The First Respondent's agent indicated that they were content for the contractor which had submitted the lowest estimate, UKFM Ltd, to undertake the works and that they were content for the works to proceed. UKFM Ltd were instructed to undertake the works the same day. The works commenced in April 2023 and were finished in September 2023

### **Responses from the Respondents**

16. The First Respondent objects to dispensation both on its own behalf and on behalf of the leaseholders. It submits that, given the length of time which passed between the decision to repair the lifts in October 2023 and the start of the works in August 2024, there was ample time to follow the s.20 consultation process. It submits that as the building is over 18 meters high it is classified as a high risk building and that the provisions

of the Building Safety Act 2022 may be engaged and states that at no stage has the Applicant supplied the leaseholder company or any of the lessees with a copy of the report or reports which prompted the Applicant to instruct Elan to replace both lifts.

17. As regards the fire doors the Respondent states that it has not had sight of the fire door inspection reports and therefore it has not been able to judge for itself whether the costs are acceptable. Again it submits that the Building Safety Act may be engaged with regard to who is to pay for the works.
18. In its reply the Applicant acknowledges that it had not supplied the Respondent with copies of the report(s) into the condition of the lifts. The Tribunal has not been provided with any evidence that the Applicant consulted at any stage or to any extent with the Respondents with regard to the lift works until 13 August 2024 when according to the Respondents there was a meeting between the First Respondent and/or their agent and MAP LLP to discuss the works generally.

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

19. The Tribunal determines that it will grant dispensation in relation to the lift works. The Tribunal does not consider that the Respondents have established that they been prejudiced by the Applicant's decision not to follow the s.20 consultation process. The Tribunal acknowledges that any effort to establish prejudice which they might have made may have been hampered by the fact that the Respondents were apparently not supplied with the lift report(s) or estimates until very late in the process. However the Respondents have been in possession of the application since 17 August 2024 and have had the lift report since it was served with the bundle at the very latest. No application has been made on behalf of the Respondents to the tribunal for disclosure of any documents, for permission to file additional evidence, or to have an oral hearing. Additionally the Applicant's evidence is that it selected the lowest of four tenders it obtained once it had decided to carry out the works. For these reasons the Tribunal considers that the Respondents have not established that they have been prejudiced by the lack of consultation regarding the lift works. The Tribunal notes that the Respondent submits that there would have been ample time for the Applicant to consult between October 2023 when it decided to carry out the lift works and August 2024 when the works commenced, but the fact is that the contractor had been selected and instructed by November 2023.
20. As regards the fire door works the position is that while the s.20 consultation process was not followed, the Applicant's agent did supply the Respondent's agent with the estimates and informed them that they did not intend to carry out a s.20 consultation and asked them if they would like any additional contractor to be approached. The Respondent's agent's response was that that it was content for UKFM

Ltd to be instructed. In the Tribunal's view this indicates that it is unlikely that the Respondents would have acted any differently had the s.20 process been followed by the Applicant.

21. The Tribunal notes that the Respondent considers that the Building Safety Act 2022 may be engaged by these works, but that is not relevant to the question of dispensation under s20ZA of the 1985 Act.
22. The Applicant is reminded that, as stated in the directions, it is the responsibility of the Applicant to serve a copy of this decision on all the Respondents.

**Name:** Judge N O'Brien

**Date:** 20 November 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).