FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LDC/2024/0039**
Property	**:**	**Beetham Plaza, 25 The Strand, Liverpool L2 0XW**
Applicant	**:**	**Beetham Plaza Limited**
Representative	**:**	**Brady Solicitors**
Respondent	**:**	**The Leaseholders (see Schedule)**
Type of Application	**:**	**Application for the dispensation of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Watkin and Aaron Davis MRICS**
Date and Venue of Hearing	**:**	**Paper Determination 6 March 2025**
Date of Decision	**:**	**6 March 2025**

DECISION

Decision

The Applicant's name on the Application is changed to Beetham Plaza Limited

The Application is dismissed.

The Background

1. The Application dated 20 May 2024 is made on behalf of Beetham Plaza Limited (the "Applicant"), in relation to Beetham Plaza, 25 The Strand, Liverpool L2 0XW (title) (the "Property"). Whilst the name of the Applicant on the Application is Beetham Plaza, the Tribunal considers this to be in error.

2. The Tribunal has not been provided with copies of the Land Register. However, a copy of a lease (dated 12 March 1999) has been provided (the "Headlease"). The Headlease is for a term of 150 years from 12 March 1999. Additionally, a copy of a sample lease dated 16 August 2000 in respect of Apartment 503 has been provided (the "Lease"). Beetham Plaza Limited is named as lessee on the Headlease and landlord on the Lease. Therefore, it appears to the Tribunal that the correct legal name of the Applicant.

3. By the Application, the Applicant seeks a determination from the Tribunal that it is reasonable to dispense with the section 20 requirement to consult and states that no consultation has been carried out. It is also understood that no consultation has been commenced.

4. The Respondents are the leasehold owners of flats within the Property (the "Respondents")

5. The Property is a former office block which was converted in 42 apartments in 1990.

The Law

6. Section 20(1) Landlord and Tenant Act 1985 provides:

> *(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*
>
> *(a) complied with in relation to the works or agreement, or*
>
> *(b) dispensed with in relation to the works or agreement by (or on appeal from) **[**the appropriate tribunal**]**.*

7. S.20ZA of the Act reads as follows:

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.*

8. The consultation requirements are set out at schedule 3 of the Service Charges (Consultation Requirements) (England) Regulation 2003.

9. In the case of ***Daejan Investments Ltd v Benson [2013] UKSC 14 ("Daejan")***, the Supreme Court noted the following:

a. The only express stipulation within section 20ZA(1) in relation to an application to dispense with the consultation requirements is that the tribunal must be "*satisfied that it is reasonable*" to do so.

b. The purpose of the requirements is to ensure that the tenants are protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, the tribunal focus should be on the extent to which the tenants are prejudiced in respect of the failure to comply.

c. The "*main, indeed normally, the sole 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. (Paragraph 50).

d. 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.

e. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements and it would not be convenient or sensible for the Tribunal to distinguish between "a serious failing" and "a technical, minor or excusable oversight", (paragraph 47).

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

g. 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 application under section 20ZA (1).

h. 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/leaseholders.

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

j. 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.

Documents

10. At the request of the parties, the Tribunal has considered this matter without a hearing. The Tribunal has had the opportunity to consider the 428-page bundle of documents provided by the Application (the "Bundle").

11. Any references to page numbers are to numbers of the pages within the Bundle.

12. The Tribunal has also received a statement from the Applicant's solicitor dated 4 March 2025 together with an application for an extension of time. Whilst this was served out of time and not reasons have been given for the lateness, the Tribunal has carefully considered whether to allow the statement but in the interests of proportionality and fairness to the parties, it has been allowed and has been considered by the Tribunal.

The Applicant's Submissions

13. The Applicant's Statement of Case (page 18) sets out that:

a. There are two lifts in the Property. The first lift covers six floors and is not operational and the second lift covers ten floors and is stated to be "*struggling with the capacity*" due to it being the only operational lift. Parts from the first lift are being used to maintain the second lift.

b. A lift commission report dated 19 December 2023 (page 85) and a further report (dated 25 January 2024) recommend replacing the lifts for reasons of fire requirements but set out two options:

i. Upgrade both lifts;

ii. Replace both lifts

c. The works will trigger the statutory consultation process under section 20.

14. The Applicants explain that the Property is a high rise building for the purposes of section 3.1 of the Fire Safety (England) Regulations 2022 (the "Fire Safety Regulations") and, as such, the Applicant, as the responsible person must carry out routine checks of lifts, rectify any faults and report any fault that cannot be rectified within a 24-hour period to the local fire and rescue team.

15. The Applicant has provided quotes which provide that the works required to replace the first lift will cost £65,200 plus VAT (page 1117-124) and the works to replace the second lift will cost £76,100 plus VAT (page 109-116)

16. The Applicant states that it has applied for a dispensation *"given the urgency of the works"*.

The Respondents Position

17. A number of the Respondents have provided responses objecting to the Application. Each of the responses are worded differently and complain that the Applicant has not obtained a range of quotations, that no explanation is given for the option for repairs chosen and no second opinion has been obtained in relation to the works.

18. The Respondents state that they were not informed of the Application to the Tribunal and indicated concern that only one quote for works has been obtained from a company that they understand is no longer trading. The Respondents are also concerned that the damage to the second lift may have been caused by one of the leaseholders due to over-use in the refurbishment of apartments.

19. It is also noted that the Respondents state that the first lift permanently ceased working in April 2023 and that it was the second lift that conformed to fire-fighting standards when the building was developed in 2000.

20. The Respondent also express concern about the accounting practices of the Applicant and state that they do not know whether there are sinking funds available that could be put towards the work, these aspects have not been considered by the Tribunal.

Applicant's Statement in Response

21. The Tribunal also considered the statement from the Applicant's solicitor dated 4 March 205 stating:

    a. the Applicant had insufficient time to adhere to the consultation requirements.

    b. a revised quote is being obtained from A1 Lifts Limited.

    c. a quote has now been obtained from Knowsley Lifts in the sum of £256,484 plus VAT for the replacement of both lifts.

    d. clause 7 of the Fire Safety Regulations requires all lifts to be checked and for faults with "*a lift for use by fire fighters*" to be rectified.

    e. that an enforcement notice dated 24 June 2024 (the "Enforcement Notice") reaffirms that the lift replacement is required by the Fire Safety Regulations.

    f. The Applicant also responds to comments by the Respondents in relation to the sinking fund and accounting practices of the Applicant.

Decision

22. Pursuant to ***Daejan***, the Tribunal considers whether the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in the circumstances of this Application. The Leaseholders must be protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, and whether the leaseholders may suffer prejudicial from the consultation not having taken place.

23. The Tribunal notes that the Applicant contends that the works are urgent. The Applicant does not state when the issues with the lifts commenced or when the first lift became non-operational. However, it is noted that the Respondents contend that the first broke in April 2023, as this fits with the report having been commissioned in December 2024, the Tribunal accepts this date. This means that the Application was not made for over a year from the date the first lift failed. It is noted that the second lift continues to function.

24. No satisfactory explanation has been given as to why the consultation process has not been commenced at any time during the two years since the first lift failed. If the works were urgent, the Tribunal considers that this is more reason for the consultation requirements to have been commenced.

25. The Tribunal has considered the Enforcement Notice and the Fire Safety Regulations and does not consider that these support the Applicant's contention that the works are so urgent that the consultation requirements should not be met.

26. The schedule attached to the Enforcement Notice specifies 9 categories of work to be carried out. Item number 8 relates to "*LIFTS AND ESSENTIAL FIREFIGHTING EQUIPMENT"*. Clearly the wording shows that lifts and firefighting equipment are separate and distinct items. In relation to lifts, the Enforcement Notice specifies only that monthly checks are carried out to any lifts which are "*designed, installed and maintained to be used by fire-fighters*". The Enforcement Notice does not state, as suggested by the Applicant's solicitor, that either lift needs to be replaced.

27. The Fire Safety Regulations state that all lifts are to be checked and for faults with "*a lift for use by fire fighters*" to be rectified. The Tribunal accepts that the first lift is not "*a lift for use by fire fighters*" and, therefore, the urgency does not apply in relation not that lift. However, the Tribunal accepts that the second lift is "*a lift for use by fire fighters*". Therefore, under the Fire Safety Regulations, the obligation is to "*take steps to rectify the fault*" (regulation 7(2)). No detail is provided in relation to the word "*steps"*, commencing the consultation may have been sufficient compliance, the Fire Safety Regulations do not require that the works must be carried out within any particular time frame. However, regulations 7(3) requires a report to be made to the fire and rescue authority. It is anticipated that the fire and rescue authority would then make enquiries and, if the works had been urgent, the Tribunal would expect that an enforcement notice would have been issued requiring urgent works to be carried out. This did not occur. Despite an Enforcement Notice having been

issued, it does not specify that works have to be carried out to either lift. Therefore, based on the information provided, the Tribunal is not able to conclude that the words are sufficiently urgent that it is reasonable for the consultation requirements to be dispensed with.

28. Furthermore, it is noted that the Applicant has not specified how quickly the works could be carried out even without the consultation requirements being complied with as, at present, they are awaiting further quotes.

29. The Applicant does not explain why efforts were not made to comply with the consultation requirements from January 2024. In the absence of consultation and in light of the information provided, the Tribunal cannot be satisfied that the leaseholders will not be prejudiced by the failure to consult.

30. If a dispensation is granted, the Respondents would be prejudiced due to neither alternative opinions or quotes having been obtained for works that are substantial. The report from A1 Lifts Limited does not set out the reasons for recommending replacement of the second lift and do not specify whether repair would be appropriate or what the cost of the repair would be. The Tribunal notes that the letter of 25 January 2024 states that the second lift "*could break down beyond repair at any time*". Therefore, whilst unclear, it is inferred that, at present, it could be repaired.

31. The Tribunal is extremely concerned that a landlord would apply to the Tribunal for dispensation in circumstances where they consider the works to be urgent but does not then proceed at the same time with the consultation. In the present circumstances, the consultation could easily have concluded a significant time prior to a decision being provided by the Tribunal and there was no reason for the consultation not to run in tandem with the Application.

32. The Tribunal considers that, in all the circumstances, it is not reasonable to dispense with the consultation requirements and the Application is dismissed.

Appeal

33. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

6 March 2025

Schedule

Leaseholders

Andrew James Hall & Kathryn Louise Dyson
Andrew Patrick Garry & Katie Ann Williams
Anna Christina Vaishnav
Anthony Lap Man Cheung & Brenda Po Wong
Beetham Plaza Limited
Beetham Serviced Apartments Limited
Harry Richard Raymond
Jasminder Jason Khara
John Johnson McCarroll & Jane Rachel Andrews
John Lane & Sheila Mary Lane
Julie Ann Crosbie-Chown
K H Woolridge & L E Bracken
Margaux Nathalie Sandrine Chiesa
Michael H Scott & Julie C Scott
Miss Jennifer Duff
Mr Alun R J Mason
Simon Ronald Fisher & Carlean Sheila Theresa Fisher
Mr Paul Andrew Burns
Mr Paul Rosenblatt
Mr Stephen Finnan
Rubaid Zaidi & Sarina Khalid Zia
Russell Dean Moffat
Sean Patrick Marley
Manjinder Singh Sidhu
Nicholas James Cutler
Wendy Marie Brandon
Bryan Johnson
Cameron James Faulkner
Elliot Philip Lawless
Fraser Hughes
Kate Morley
Lewis McDonough
Liz Cooper Jones
Jill Denise Tyler
Niell William Taylor
Paul John Nelson
Paul Robert Clarke
Ralph Colley
Roy Jones
Stuart Winnard
Wendy Brandon