



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

Case Reference : **CAM/22UF/LDC/2025/0622**

HMCTS : **Paper**

Property : **Celmeres Court, 77 Springfield Road,
Chelmsford CM2 6LG**

**Applicant (Landlord
& Freeholder)
Representative
(Managing Agent)** : **Brinor Investments Limited**
: **Encore Estate Management**

Respondent : **All Leaseholders/Tenants of dwellings
who may be liable to contribute towards the
cost of the relevant works at the Property**

Type of Application : **To dispense with the consultation
requirements referred to in Section 20 of the
Landlord and Tenant Act 1985 pursuant to
Section 20ZA**

Tribunal : **Judge JR Morris**

Date of Application : **13 March 2025**
Date of Directions : **24 April 2025**
Date of Decision : **9 June 2025**

DECISION

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Decision

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with all the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).

2. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to the Leaseholders.

Reasons

The Application

3. On 13 March 2025 the Applicant's Representative, who is the Applicant's Managing Agent, applied for retrospective dispensation from the statutory consultation requirements in respect of qualifying works which are to repair the lift at the Property.
4. The lift at the Property is not only a passenger lift but is also a firefighting lift. The Tribunal is aware from its own knowledge and experience that this is a specialised type of elevator designed to transport firefighters and their equipment in a fire emergency. Unlike regular passenger lifts, which shut down upon a fire alarm, firefighting lifts are designed to continue operating as long as possible, providing a safe route for firefighters to reach upper floors. These lifts are not only covered by the requirements of the Lifts Regulations 2016 but also come within the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) under which six monthly inspections are required. As a result of the most recent inspection, it was found that the main hoisting machine and ropes required replacement. Due to these defects the inspector deemed the lift unsafe to use and it was shut down until repairs had been completed. As the operation of the lift is not only for the convenience of occupiers of the building but also for their health and safety, its repair was a matter of urgency.
5. The Property is a converted office block consisting of 20 residential units over 6 floors. There is a shared communal car park. Flats 1-5 have their own entrances and there is a flat roof to Flat 5. The entrances to Flats 6-20 are via the main block into a common area serving flats 6-20 only. The common area includes the lift which serves 5 upper levels and, as mentioned above, is a firefighting lift which the fire brigade needs to use in the event of emergencies as the building is over 11 metres high.
6. An estimate of the cost was provided which totalled £23,692.80 inclusive of VAT which resulted in the unit charge being more than £250.00. Therefore, the consultation procedure under section 20 of the Landlord and Tenant Act 1985 was required or dispensation granted for the full cost to be met by the service charge.
7. Directions were issued on 24 April 2025 which stated that the Application would be determined on or after 5 June 2025 based on written representations and without an inspection, unless either party made a request for an oral hearing by 15 May 2025. No request was received.

8. The Directions required the Applicant's Representative to send by 1 May 2025 to each of the Respondent Leaseholders, by hand delivery or by first class post and by email, if practicable, copies of:
 - i. The application form without the list of leaseholders' names and addresses;
 - ii. The Directions;
 - iii. A clear concise description of the relevant works for which dispensation is sought;
 - iv. an estimate of the cost of the relevant works, including any professional fees and VAT;
 - v. Any other evidence relied upon; andTo file with the tribunal confirming that this had been done and stating the date on which this was done.
9. On 2 May 2025 the Applicant's Representative confirmed that this Direction had been complied with and the bundle and Directions had been sent to the leaseholders of Flats 6-20 and the Freeholder.
10. If the Respondent Leaseholders wished to oppose the Application the Directions required them to do so via an attached reply form by 22 May 2025. No forms or representations were received from the Leaseholders.

The Law

11. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
12. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
13. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out in Annex 2 of this Decision and Reasons and this is an Application for such dispensation.
14. References to "tenants" includes "leaseholders" and vice versa.

Submissions & Evidence

15. The Applicant's Representative provided a bundle to the Tribunal which included (The account of the evidence given here is a precis and paraphrase of the documents provided):
- A copy of the Lease for Flat 9, the terms of which are understood to be common to all the Leases,
 - Application to the Tribunal,
 - Tribunal Directions,
 - Applicant's confirmation regarding compliance with Directions,
 - Specification for Tenders issued by Technical Lift Consultancy Ltd
 - Tender Analysis
 - Cost Estimate
 - Correspondence to Leaseholders dated 13 March 2025, 24 April 2025, 1 May 2025, 2 May 2025
- These together set out the Applicant's case as follows:

16. The Lease is between the Leaseholders and the original landlord the reversion to the leasehold having been assigned to the Applicant Landlord, who is also the Freeholder. The Lease is for a term of 125 years from 1 April 2016. The Property is referred to in the Lease as the "Building." The relevant provisions of the Lease are:

a) Clause 1.1

"Retained Parts" include the Common Parts

"Common Parts" are defined as the Internal Common Parts and the External Common Parts that are not part of the Flats and which are intended to be used by the tenants and occupiers of the Building.

"Internal Common Parts" include the lift.

"Tenant's Covenants" are set out in Schedule 4 which the Tenant covenants to observe and perform under Clause 5.

"Landlord's Covenants" are set out in Schedule 6 which the Landlord covenants to observe and perform under Clause 6.

"Service Charge" is defined as the moneys actually expended or reserved for expenditure by or on behalf of the Landlord at all times during the Term in carrying out any and/or all of the obligations specified in Schedule 7.

b) Schedule 4 Tenant's Covenants

2. The Tenant shall pay the estimated Service Charge if at the end of the Service Charge Year the estimate is less than the than the

Service Charge the tenant shall pay the difference if more the Landlord shall credit the difference.

- c) Schedule 6 Landlord's Covenants
4. Services
The Landlord shall provide the Services.

- d) Schedule 7 The Service Charge,

Part B Building Services

The inspection, maintenance, and repair of the lift falls under several paragraphs of the Schedule as follows:

- 2. Inspecting maintaining renting renewing reinstating replacing ...such equipment relating to the Building...as the Landlord may from time to time consider necessary
- 3. Inspecting rebuilding re-pointing repairing cleaning renewing ..the Retained Parts
- 7. Maintaining renewing ...any fire alarms and ancillary apparatus fire prevention and fire fighting equipment and other apparatus ...in the retained Parts.
- 8. Repairing maintaining inspecting ...the Service Installations which serve the Building
- 10 Inspecting servicing maintaining repairing amending overhauling and replacing...all apparatus plant machinery and equipment ...within the building

Part D Costs applicable to any or all of the previous parts of this Schedule

- 13. Such sum as shall be considered necessary by the Landlord...to provide a reserve fund

- 17. The Applicant's Representative stated in the Application Form that:

The LOLER inspection identified serious defects which made the lift unsafe and should be shut down until repairs have been completed. Quotations were obtained which showed the cost of the works exceeded the section 20 consultation threshold and so dispensation was being sought in order that the works could be undertaken as a priority. To carry out the section 20 consultation would result in a delay that would place the occupiers of the Building at risk and therefore an Application for Dispensation was made.

An independent lift consultant was engaged to prepare a schedule of works so that each tender could be compared against the same specification.

Communication with Leaseholders had been provided via the online portal and email exchange with a view to repairs being undertaken immediately.

18. In a letter dated 13 March 2025 (copy provided) the Applicant's Representative informed the Leaseholders that the lift had been taken out of service due to important safety works being highlighted in the recent LOLER inspection, which include the following:
- The brake can be manually wound and requires further investigation and rectification
 - The suspension rope is fouling on the lift motor mounting frame and this should be rectified

It was said that quotations had been obtained from multiple contractors but these were of such varying costs that an independent lift consultant was engaged to draft a full detailed specification to be used for retendering the works.

Due to this being the only lift at the Property, an application to the First-tier Tribunal (Property Chamber) was being made for dispensation from the Section 20 procedure which would cause significant delays. It was added that it was intended to use reserve fund monies to pay for the work.

19. In April 2025, Technical Lift Consultancy Ltd were engaged to draw up a specification for tenders (copy provided).
20. In a letter dated 24 April 2025 (copy provided) the Applicant's Representative informed the Leaseholders that the independent lift consultant confirmed that the failings have not been due to maintenance or any works undertaken by the current service provider, and that the lift has merely reached the end of its life expectancy sooner than would have been anticipated. All mechanical equipment that powers the lift require replacement. A copy of the specification of works was provided with the letter.

The estimated cost was estimated at £20,000-£24,000 plus VAT. It was added that as the failing is not due to malicious/accidental damage the cost is not within the engineering insurance policy, and the service charge funds will be required to recover the costs for repair.

The lease does not allow for supplementary demands to be raised outside of the service charge estimate, so a new revised budget will need to be issued.

21. On 1 May 2025 Technical Lift Consultancy Ltd provided an analysis of the tenders obtained as follows:
- Curti Lifts failed to return an offer and have therefore been excluded from this analysis.
 - Nova Lifts has offered a price of £22,315.00 plus vat inclusive of a £1,000.00 provisional sum. Lead time from instruction 4 weeks with a site period for installation of 2 weeks

- Arrow Lifts has offered a price of £21,700.00 plus vat inclusive of a £1,000.00 provisional sum. Lead time from instruction 4 weeks with a site period for installation of 2 weeks.
- Aspect Lifts have offered a price of £18,644.00 plus vat inclusive of a £1,000.00 provisional sum. Lead time from instruction 4 weeks with a site period for installation of 2 weeks.

All contractors are full members of L.E.I.A. (The Lift and Escalator Industry Association) and possess the required insurances and accreditations such as Construction Line, RoSPA, and SafeContractor.

All contractors have complied with the technical specification and the terms and conditions of tender and able to offer a L. E.I.A. Contract Guarantee Certificate.

It was recommended Aspect Lifts be awarded the project being the most competitive for the sum of £18,644.00 plus vat and inclusive of a £1,000.00 provisional sum and provide a 12 months warranty to the works carried out.

22. The cost breakdown was:

Aspect Lifts:	£18,644 plus VAT
TLC Consulting professional fee:	£1,100 plus VAT
Total Project cost	£23,692.80 inclusive of VAT

23. On 2 May 2025, following the Application to the Tribunal the Applicant's representative sent a letter in compliance with the Directions. This informed the Leaseholders of the works required which included:

- Lift Machine (Geared or Gearless) Replacement
- Gear Unit Replacement
- Lift Motor Replacement
- Electronic Break Replacement
- Hand ~Winding Sheave Replacement
- Replacement Emergency Stop Switch
- Guarding/Debris Plates

It was added that the lift is a Fire Fighting Lift, and so reinstatement works are of the utmost priority and need to be carried out as soon as possible.

With the letter was provided instructions on how to make representations to the Tribunal and:

- Copy of the original application form to the FTT for dispensation
- Copy of the Directions issued by the FIT
- Copy specification of Works as prepared by TLC
- Tender analysis report received on 1 May 2025

Findings

24. The Tribunal finds from the Lease that the Landlord is obliged to make repairs to the lift and that these are chargeable to the Tenants through the Service Charge.
25. The Tribunal from its knowledge and experience is aware of the need to act promptly in respect of firefighting lifts as there is a risk to health and safety when they are not in operation.
26. The Tribunal found that the Applicant's Representative had acted in the interests of the Leaseholders in instructing an independent lift consultant to assess the works that were required and prepare a detailed schedule of works against which contractors could tender and their quotations analysed. The consultant was also able to determine those contractors who were competent to carry out the work. The Tribunal found that the lowest tender was selected.
27. The Tribunal found that the letters of 13 March 2025, 24 April 2025, 1 May 2025, 2 May 2025 kept the Leaseholders informed in the absence of the section 20 consultation procedure.
28. The Tribunal found that the Leaseholders having been kept informed and were in a position to make representations to the Tribunal in relation to the Dispensation Application had they felt prejudiced and wished to do so.
29. Therefore, the Tribunal finds that the Leaseholders have not suffered any relevant prejudice by the failure to carry out the consultation procedure.

Determination

30. In making its decision the Tribunal had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. In summary, the Supreme Court noted the following:
 - 1) The main question for the Tribunal whether the landlord's breach of the section 20 consultation requirements resulted in the leaseholders suffering real prejudice.
 - 2) The financial consequence to the landlord of not granting a dispensation is not a relevant factor.
 - 3) The nature of the landlord is not a relevant factor.
 - 4) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - 5) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - 6) 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.
 - 7) 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.

- 8) The Supreme 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.
 - 9) 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.
 - 10) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
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31. The Tribunal is satisfied that it is reasonable to dispense with compliance with all the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
 32. The Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.
 33. The Applicant shall serve a copy of the Tribunal’s decision on dispensation, together with the relevant appeal rights attached, to all Leaseholders.

Judge JR Morris

Annex 1 – Right of Appeal

1. 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.
2. 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.
3. 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.

4. 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.

Annex 2 – The Law

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –
- (1) 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.
 - (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—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
 - (4) to (7)... not relevant to this application.