



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

Case Reference : **CAM/00MC/LDC/2024/0614**

Property : **Abbotsmead Place, Wolsey Road, Caversham,
Berkshire RG4 8BB**

Applicant : **Grange Management (Southern) Ltd**
Representative : **Samantha Cheng, Grange Management
(Southern) Ltd**

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

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 : **11 November 2024**
Date of Directions : **21 January 2025**
Date of Decision : **3 March 2025**

DECISION

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Decision

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with 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 all Leaseholders.

Reasons

The Application

3. On 11 November 2024 the Applicant applied for dispensation from the statutory consultation requirements in respect of works to replace key components to bring the lift that serves 16 flats numbered 1-33 (odds) at the Property back into service. Although the lift only serves the block of flats numbered 1-33 (odds), under the terms of the Leases the Leaseholders in the other two blocks at the Property, one of 8 flats numbered 2-16 (evens) and the other of 12 flats numbered 18-40, which have no lift, contribute towards the costs of the lift. They are therefore included as Respondents. The Leaseholders of Abbotsmead Place 1-33 (odds) pay a higher proportion of the Service Charge than the Leaseholders of the other two blocks.
4. The total number of flats is 36. The cost of the work is £23,677.00 plus VAT which exceeds the threshold of £250.00 per unit which requires the Applicant to consult the Leaseholders in accordance with the procedure required under section 20 of the Landlord and Tenant Act 1985. The works are therefore “qualifying works”.
5. Directions were issued on 21 January 2025 which stated that the Application would be determined on or after 3 March 2025 based on written representations and without an inspection, unless either party made a request for an oral hearing by 14 February 2025. No request was received.
6. The Directions required the Applicant to send by 31 January 2025 to each of the Respondents, 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. The 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.
7. On 21 January 2025 the Applicant confirmed that this Direction had been complied with that day and a copy of the letter sent to the Respondents was provided. This referred to:
 - i. the application form (without any list of leaseholders’ names and addresses);
 - ii. the directions;

- iii. a clear, concise description of the relevant works for which dispensation is sought, which had been included in the letter of 12 November 2024 which had been sent to all Respondents by the Applicant (copy provided); and
 - iv. the quote from Stannah (the chosen contractor) dated 4 October 2024 (copy provided).
8. The Directions also required those Respondents who opposed the application by 14 February 2025 to:
 - a) Complete the reply form attached to the Directions; and
 - b) Send to the Applicant a statement in response to the Application together with any evidence and other documents upon which they wish to rely.
9. On 17 February 2025 the Applicant emailed the Tribunal that it had not received any objections to the application from the Respondents and the Tribunal also had not received any objections. In accordance with Directions the Applicant provided a Bundle by 21 February 2025.

The Law

10. 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.
11. 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.
12. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

Submissions & Evidence

13. The Applicant provided a bundle to the Tribunal which included:
 - A copy of the Lease;
 - The Application Form;
 - The Directions;
 - Letter dated 15 October 2024 to all Respondents enclosing Section 20 Notice of Intention for proposed lift works;
 - Letter dated 12 November 2024 informing all Respondents of intention to apply for dispensation from Section 20 consultation due to urgency of work and outlining works to be carried out;

- Letter dated 21 January 2025 enclosing Tribunal Directions with description of the works and a quotation;
- Confirmation of Compliance with Directions.

14. These together set out the Applicant's case as follows:

The Lease

15. A sample copy of the Lease, which was understood to be common to all the Flats, was provided. Leases are for a term of 125 years from 1 January 1997. The relevant provisions of the Lease are:

- a) Under Clause 2 of the Lease "the Lessee covenants with the Lessor and the tenants for the time being of other dwellings on the Development as follows:
 - (2) To pay a percentage of the Maintenance Cost in accordance with and as defined by the provisions of the Sixth Schedule hereto
- b) Under Clause 5 of the Lease "the Lessor hereby further covenants with the Lessee (subject to the compliance by the Lessee with his obligations under the Lease) as follows:
 - (6) To maintain repair and renew in a good and substantial condition and where applicable to keep clean and tidy:
 - (c) the communal areas of all buildings on the Development and all floor coverings entry phones drains lifts hoists motors pumps aerials satellite dishes heating apparatus lights sewers gas and water pipes electric cables wires and conduits under\and upon the Development enjoyed or used by the Lessee in common with one or more of the lessees of the other flats"
- c) Schedule 6 Part 1 there is:

"The Maintenance Cost shall be the total of all sums actually expended by the Lessor in connection with the management and maintenance of the Development and in particular but without prejudice to the generality of the foregoing shall include the following: -

 1. The cost of complying with the Lessor's covenants contained in Clause 5 of this Lease"

Directions

16. As noted above the Applicant complied with Directions.

The Application Form

17. On the Application Form the Applicant stated:

“It has been established by the current lift maintenance contractors that repairs are not viable due to the age of the lift, with replacement parts obsolete and unavailable. A lack of technical drawings means that several attempts to modify parts has proved unsuccessful. The replacement of multiple components is required not only to bring the lift back into service but to also meet current regulations. Several residents in the subject property are elderly and rely on the lift to leave their homes. Although a s20 Notice of Intention was served on 15 October 2024, due to the timeline for the supply of replacement parts from the date of instruction being an anticipated further 12 weeks, the lift would be out of service for far longer should the statutory process run its course.”

The current lift maintenance company [Stannah] provided the specification of work and their tender on 8 November 2024. Due to the timeline for supply of replacement parts [referred to above] the additional timeframe for seeking alternative comparable tenders and allowing the s20 Notice of Seeking Prices to run its course would add a further 4-8 weeks to this timeframe. This would leave elderly residents effectively housebound for much longer.”

Letter dated 15 October 2024 to all Respondents with Notice of Intention

18. The letter dated 15 October 2024 to all Respondents which included a Notice of intention stated:

“There have been increasing issues with the lift over the last year. Stannah have managed to return it to service in all cases but the most recent one. The age of the lift is such that like-for-like parts are no longer available and a lack of diagrammatic drawings is making adapting a replacement very difficult despite multiple attempts. We are advised that replacing the control panel and associated equipment is the only way to guarantee new parts will work correctly.

We very much hope that a repair can be successfully completed and Stannah are keen to continue trying. However, we are commencing the statutory consultation process now to reduce the timeframe until we can instruct replacement of the control panel and associated equipment and bring the lift back into service. We do understand that there are residents who are greatly inconvenienced without it. Unfortunately, we must follow the statutory consultation process. Should Stannah achieve a successful repair without the need for these lift works, we will not proceed with them at this stage. However, we have no doubt that the work will be necessary in the future as the lift and its parts continue to age.

Based on indicative costs, the reserve fund will fully cover the cost of the lift works and no additional payment will be necessary.”

19. The Notice of Intention described the qualifying works as stated in the letter and gave until 18th November 2024 to make observations. It also stated that it was intended to obtain 3 quotations.

Letter dated 12 November 2024 to informing all Respondents of intention to apply for dispensation from Section 20 consultation

20. The Letter dated 12 November 2024 informing all Respondents of intention to apply for dispensation from Section 20 consultation due to urgency of work and outlining works to be carried out stated:

“The decision to apply for dispensation has not been made lightly. Grange supports the statutory consultation process under s20 and will adhere to this in the significant majority of cases. However, we are aware that the lift has been out of service since 17 September 2024 and that there are residents who very much rely on it.

Stannah (the current lift maintenance contractor) has advised that all attempts to repair have been unsuccessful and submitted the specification for the supply and replacement of key components and their tender on 8 November 2024. They advised on 11 November 2024 that obtaining the parts from the supplier will take approximately 10-12 weeks from instruction. Grange required the specification to obtain comparable competitive quotes from other lift contractors and therefore none have yet been approached.

By applying for dispensation and instructing the works to be done by Stannah now, approximately six to eight weeks will be saved in the timeline. Stannah has been instructed today.

The works will cost £35,700 + VAT and will be fully met from the reserve fund which has sufficient monies available within it. No additional payment will be requested.

The following components will be replaced for modern equivalents:

- Controller
- Tapehead
- Car top control
- Shaft lighting
- Landing control stations
- Landing display
- Car operating panel
- Autodialler with GSM”

Quotation 4 October 2024

21. Stannah provided the following quotation which was sent to all Respondents.

“Following recent attempted repairs, the engineer and Technician has recommended the controller and associated equipment are replaced.

Equipment fitted

Electra Vitoria, installed Nov 1997 (27 yrs old) all original equipment with no upgrades.

Hydraulic system

All as original, Ram seals show no signs of leaking, valve block is EV100 no internal leaks at time of inspection

Lift equipment

The controller fitted to this lift is no longer available, switches buttons and door equipment, parts are still readily available through most suppliers.

Recommendations

To replace a controller, we recommend associated equipment is fitted (Tapehead), trailing cables seem to be in good condition and with no history of issues we recommend these are retained, the existing Cartop Control does not comply with current regulations and recommend this is replaced. The lift shaft lighting does not comply with current Lux regulations and with incandescent bulbs becoming obsolete we recommend this is upgraded to LED.

Lift Equipment Items required

Controller – Brains of the lift.

Tapehead – tells the lift when to slow and stop (we will use the new one supplied)

Car top control – Engineers controls.

Shaft Lighting – upgrade to LED lighting, to include emergency.

Our price to supply and fit the above equipment is £23,677.00 net plus VAT”

Letter dated 21 January 2025 enclosing Tribunal Directions

22. As stated above.

Findings

23. The Tribunal found that the Applicant’s maintenance contractor had attempted to repair the defective parts of the lift system but these now needed to be replaced. The contractor’s quotation was clear about the role of the parts that required replacing and their importance.
24. On reading the Lease the Tribunal found that flats 17 to 36 were exclusively for persons aged 55 or over. Therefore, the Applicant’s concern that there would be Leaseholders who were reliant on the lift making its repair a matter of urgency was appreciated.
25. The Tribunal is concerned where there is only one quotation. However, in the present case the Tribunal found:

- The contractor has been responsible for the maintenance of the lift and the work is an extended repair.
 - Lift installation and maintenance is very technical and specialist and there is a justification for employing the contractor who has maintained and is well acquainted with the lift.
 - There is a limited number of lift contractors from whom a quotation could be obtained.
 - There was a justification for engaging the current maintenance contractor as the works were urgent because some tenants are reliant on the lift and the lift needed to be brought up to current regulation standards. Lengthy delays might have resulted from the full section 20 consultation procedure taking into account the lead times for replacement parts.
26. The Tribunal found that a Notice of Intention was served therefore there was an opportunity for Respondents to make observations. None were made. Respondents were informed that an application for dispensation would be made, what the works were, the likely cost and how that cost would probably be met i.e. through the reserve fund.
27. The Tribunal also found that the Respondents have had an opportunity to make representations by reason of the Application for dispensation from the consultation procedure and no objections have been received. The quotation from the contractor that was sent to the Respondents set out the what was sound and what needed replacement clearly.
28. The Tribunal finds that the Leaseholders have not been prejudiced by the failure to carry out the consultation procedure considering:
- attempts to repair have been made but parts now need replacing;
 - the system needs updating to meet current regulations;
 - the work is urgent as some Leaseholders are reliant on the lift;
 - the contractor employed is a known specialist and the current maintenance contractor who is well acquainted with the specific lift; and
 - the Respondents have been kept informed and given an opportunity to make representations regarding the works.

Determination

29. 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 is 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.
30. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
 31. 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.
 32. 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.