



- Property** : 1-21 & penthouses 1-5, Jubilee Mansions, 117-119 Thorpe road, Peterborough PE3 6JH
- Application** : For dispensation from the statutory consultation requirements [LTA 1985, s.20ZA]
- Applicant** : Francis Butson & Associates, Yew Tree House, The Shrubbery, Church Street, St Neots, Cambs PE19 2BU
- Respondents** : Each leaseholder of a flat or penthouse at Jubilee Mansions, whose names and addresses are recorded on the list filed with the application

DECISION

- Tribunal** : G K Sinclair (chairman), J R Humphrys FRICS
- Hearing date** : Wednesday 3rd October 2012 at Peterborough Magistrates Court

1. For the reasons which follow, and in connection with such works as are necessary to restore to working order a functioning passenger lift at the subject premises, the tribunal grants the Applicant manager dispensation from the requirement to consult leaseholders in strict compliance with Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

Background

2. By order dated 1st December 2010 Mr Terry Butson, a partner in Francis Butson & Associates, was appointed by the Leasehold Valuation Tribunal as Receiver & Manager of the property known as Jubilee Mansions, Thorpe Road, Peterborough PE3 6JH and its curtilage for a term of three years commencing on 1st January 2011. For the factual background readers are referred to the decision dated 1st December 2010¹, which is freely available on the tribunal's website.
3. By clause 4.6 of the material leases the landlord covenants, subject to payment by the tenant of the service charge, to perform and observe certain obligations. At 4.6.1(d) is the obligation to maintain, repair, redecorate, renew, etc the passenger lifts, lift shafts and machinery, etc enjoyed or used by the tenant in common with others.
4. By the making of the tribunal's management order this obligation passed from landlord to the Receiver & Manager.

¹ Case reference CAM/00JA/LAM/2010/0002

The problem

5. In July 2012 one of the two lifts in the building ceased to function. It should be noted that while physically it is to external appearances one building Jubilee Mansions essentially comprises two distinct blocks – each with its own front door, lift and staircase – with no internal connection whatever. The occupants of the front part of the building therefore have no access to an alternative lift.
6. The building is about 9 or 10 years old and the lifts were new when originally installed. The company which manufactured them, Orona, is a large European group formed by 30 companies in Spain, France, Portugal, United Kingdom, Belgium, the Netherlands, Luxembourg and Norway. According to the Orona website it supplies approximately one in ten lifts installed in residential, office and industrial buildings across Europe. It has premises in the UK. Since the appointment of the current Receiver & Manager its lift maintenance contractor, Express Lifts Alliance Ltd, has installed an alarm and emergency telephone system in each lift. This came in useful when someone was stuck in the lift at the front of the building when it broke down.
7. Initially the problem was thought to be minor, but upon inspection it was discovered that the motor control drive unit had failed. Surprisingly, initial enquiries by Express Lifts to Orona produced a response that the product was now obsolete. If so, a new control unit would have to be supplied by a different manufacturer and if necessary adapted to fit. This might also involve the replacement of the call switches on each landing and the panel within the lift cage itself.
8. The Applicant's property manager for Jubilee Mansions, Katharine Paxton, attempted to obtain a number of quotations for replacing the motor control drive unit and such other parts as were necessary. Including labour, but net of VAT, the quotes obtained were :

a.	6.ix.12	Express Lifts Alliance Ltd	£17 815
b.	4.ix.12	Eastern Lift Services Ltd	£15 312
c.	19.ix.12	The Elevator Group Ltd	"Around £15 000"
9. There are 26 flats and penthouses within the building. Each unit is liable to pay an equal proportion of the service charge, so the statutory consultation threshold under section 20 and the regulations is £250 x 26, or £6 500. Each of the quotes and estimate received exceed that figure.
10. On 17th September 2012 the Applicant, conscious of the need to restore lift services as quickly as possible, applied to this tribunal for dispensation from the time-consuming consultation requirements appearing in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.
11. On 21st September the Applicant wrote to leaseholders, referring to the estimates for repairs being sought (above), and explaining that the current reserve fund contains only £11 000, so if expensive lift repairs were required nothing could go ahead without the necessary monies.
12. Several leaseholders replied, including the freeholder, Optima (Cambridge) Ltd, which still owns and sublets 6 flats in the building. According to Mr Cyrus Khazai of that

company, who attended the hearing, as a result of its enquiries of its own lift engineer – the results of which were shared with the Applicant – Optima’s engineer is either the UK arm of Orona or is connected to it. These fresh enquiries suggested that it may be possible to replace the motor control unit much more cheaply, so several days before the hearing Express Lifts were asked to send the unit to Orona UK at Wolverhampton for investigation. Whether this will result in a much reduced repair and reinstallation cost of around £6 000 (including VAT) remains to be seen.

13. As well as a representative of the freeholder a number of other leaseholders attended the hearing and expressed their support for and confidence in the current Receiver & Manager. None had any observations to make about the likely cost; all being keen that the work was done as soon as possible. They had every expectation that Francis Butson would act sensibly.

Conclusion

14. While the letter sent to leaseholders on 21st September does not formally comply with stage one of the consultation procedure it at least has the merit of keeping recipients informed of events just as far as the Applicant was able to do so. Recent developments may prove more heartening, but hopes may yet be dashed.
15. The Receiver & Manager has the confidence of the leaseholders and is understandably keen that a lift service be restored as soon as possible. If the three-stage consultation process has to be followed then the work cannot even be commissioned until well after Christmas. That is unacceptable.
16. The tribunal therefore determines that provided the Receiver & Manager keeps the leaseholders informed of the results of the current investigations and of the steps likely to be required (and their approximate cost) then it need not follow the consultation process as set out in the regulations and may proceed with and recover the full cost of the necessary repairs.
17. In view of the two quotes and one estimate already received the tribunal accepts that the cost may be quite significant but the work must be done. If a further call on leaseholders is required in order to fund the work then – subject to the outcome of the current enquiries of Orona – the tribunal also determines that a sum in the order of £20 000 (to include VAT) would be an entirely reasonable estimate of the sum required in advance. With luck, however, the work may be cheaper and more straightforward if Orona can supply compatible replacement parts.

Dated 3rd October 2012

Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal