

12349



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

Case reference : **CAM/OOMB/LDC/2017/0012**

Property : **67 - 72 Abbey Gardens, Upper
Woolhampton, Reading, Berks RG7
5TZ**

Applicant : **Avalon Residents Management Co.
Ltd**

Representative : **Mrs C R Davis of Pinnacle Property
Management**

Respondent : **The lessees of flats 67 - 72 Abbey
Gardens**

Representative : **None**

Type of application : **To dispense with the requirement
to consult lessees (s20ZA Landlord
and Tenant Act 1985)**

Tribunal member : **Tribunal Judge Dutton
Mr N Martindale FRICS**

Hearing date and venue : **11th August 2017 at Douai Park
Pavilion, Woolhampton 11th August
2017**

Date of decision : **14th August 2017**

DECISION

DECISION

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works required to the lift (defined as the Works below) at the property 67 - 72 Abbey Gardens, Upper Woolhampton, Reading (the Property) as required under s20ZA of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. We inspected the development and the common parts of the Property before the hearing. The Property contains six flats, in a three storey purpose built block, erected circa 2006. The Property is situated in a very pleasant development, some new build, some not, in what was the site of Douai School. The development presents well and appears to be well tended.
3. The application states that urgent repair works are required to the lift at the Property. Apparently the lift stopped working in July this year as a result of a failed drive unit. The company who installed the lift and has a maintenance contract, Kone PLC, has provided a report with recommendations and initially quoted a price of £3,938.63 plus VAT for the Works. This price has been reduced to £3,200 plus VAT. A second price has been obtained from Unique Lifts Limited at a price of £3,105. However, if the Works are placed through this company then Kone would not be responsible for ongoing maintenance of the drive unit and the cost of switching to Unique for ongoing maintenance would far outweigh the minor difference in cost.
4. We were told that the bulk of the costs for this work would be met from the reserve fund.
5. It appears that three lessees support the Works, Mr Fletcher of flat 72, Mrs Kiely of flat 71 and Ms Dickson of flat 70. The other lessees have not voiced an objection.
6. The matter came before us on 11th August 2017.
7. Prior to the hearing we had available a bundle of papers which included the application, the directions, copies of letters sent to the lessees explaining the need for the works. A copy of the leases for flats 68 and 72 were provided to us as was a report from Kone setting out a repair proposal as to the Works and costings. A subsequent email from Kone confirmed their agreement to a reduced price of £3,200 plus VAT.

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4

8. Mr Fletcher attended the hearing to confirm his support of the application. He also confirmed that he preferred the quote from Kone to that of Unique as it preserved the maintenance position and avoided additional costs which would arise as a result of a switch to another contractor, for example in the emergency call out arrangements. We were grateful to him for attending.
9. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the Works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

10. We have considered the papers lodged, born in mind our inspection and all that was said to us at the hearing. There is no objection raised by the Respondents. There is, in our findings no doubt that the matter needed to be dealt with speedily to reinstate the working lift at the Property.
11. We are satisfied that it is appropriate to dispense with the consultation requirements for the Works. Our decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.

Andrew Dutton

Tribunal Judge

Andrew Dutton

14th August 2017

The relevant law

Section 20 of the Act

- (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) a leasehold valuation tribunal.

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

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).