FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LDC/2022/0159**
HMCTS code (paper, video, audio)	**:**	**P: PAPERREMOTE.**
Property	**:**	**Campden House Court, 42 Gloucester Walk, London W8 4HU.**
Applicant	**:**	**Pitt Kensington Estate.**
Representative	**:**	**Izabella Tyranowicz of D&G Block Management.**
Respondent	**:**	**Various leaseholders as per the application.**
Representative	**:**	**In person.**
Type of application	**:**	**Application under S.20ZA Landlord & Tenant Act 1985 for dispensation from the requirements to consult leaseholders in relation to qualifying works.**
Tribunal members	**:**	**Tribunal Judge Aileen Hamilton-Farey.**
Venue	**:**	**Remote.**
Date of decision	**:**	**22 February 2023**

DECISION

Covid-19 pandemic: description of hearing.

This has been a remote determination on the papers, which has not been objected to by the parties. A face-to-face hearing was not held because a paper determination was not objected to, and all of the matters could be determined without a hearing. The tribunal was provided with a bundle of documents that included the application form, directions and statement of case, and statement of reply.

Decisions of the tribunal

(1) The tribunal determines that dispensation from the requirements to consult under S.20 of the Landlord and Tenant Act 1985 should be granted in relation to the works described below.

(2) The tribunal determines that dispensation should be granted on 'terms' which are that the cost of the remedial works and all professional fees will not be passed onto the leaseholders via the service charge or any other method. The tribunal makes this determination on the basis that that works would not have been required, had the applicants not removed the lift buffer during their other works to the basement flat.

(3) The tribunal does not have jurisdiction to determine the question of whether compensation should be given to the leaseholders affected by the lack of the lift, the reduction in rentals achieved etc, during the period when the lift was out of order, and this is a matter for the parties.

The application

1. The Applicant seeks dispensation from the requirements to consult leaseholders pursuant to s.20ZA of the Landlord and Tenant Act 1985 in relation to the qualifying works described below.

The background

2. The property which is the subject of this application comprises 14 flats over 5 floors.

3. The Applicant is the freeholder of the property and each of the respondents occupies their flat under the terms of a long lease which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

4. The applicant states that during major works to the basement flat, the lift buffer was removed without the knowledge of the other leaseholders in the block. On 9 March 2022, Bureau Veritas UK Limited reported that the lift counter-weight buffer had been removed and recommended works to reinstate the lift. Following this report, Mzr. Anthony Langboung, an Environmental Health Officer for the Royal Borough of Kensington and Chelsea Council wrote to the applicant on 14 March 2022 to say that the lift required urgent works and could not be used until those works had been completed.

5. The leaseholders were concerned that the lift was out of action, especially as some of them are elderly and at least in one case, the rent received by a leaseholder for the sub-letting of their flat, had to be reduced by £1,000 per month to reflect the lack of the facility. Several e-mails were sent to the managers that proposed meetings or sought information which was not forthcoming. The leaseholders provided an alternative quotation for the works, after delays by the manager in providing access to the building, but this quotation appears to have been disregarded by the applicants.

6. After some delays, a Notice of Intention under S.20 was served on the respondents on 2 September 2022, some six months after the lift was decommissioned, but this notice was invalid in that it gave insufficient time for the leaseholders to engage in the consultation process. A second Notice of Intention was served on 4 September, but by this time the leaseholders had been informed that the works would have started three days earlier. It appears that the lift was restored to working order at the beginning of October 2022.

7. An application for dispensation was made to this tribunal on 19 August 2022. Directions were issued on 7 November that required the applicants to serve a copy of the directions on the respondents and giving both parties an opportunity to make representations in the matter.

8. A bundle of documents was supplied by the applicant as directed and this included the full response in opposition to the application from the respondents. The tribunal has read the submissions before making its determination.

9. Within their submission the respondents make claims about the mis-management of the building, the lack of maintenance and redecoration. These are not matters that can be considered as part of this application, but the rights of the parties under S.27A of the Landlord and Tenant Act 1985 are maintained.

The issues

10. The issue before the tribunal is whether dispensation from the requirement to consult the respondent leaseholders in relation to the works should be granted. The tribunal is not generallyconcerned with the cost of the works, or whether the amount identified by the applicant in the application is reasonable or payable.

11. Before considering whether dispensation should be granted the tribunal must determine what prejudice, if any, would be suffered by the respondents if dispensation was given as identified in the Supreme Court decision of *Daejan v Benson and Ors [2013] UKSC 14 & [2013] UKSC 54*. In this instance the respondents have identified the financial prejudice that they have suffered due to the time taken by the applicant to resolve this matter, and the fact that the issue would not have arisen in the first place if the applicant had not removed the lift buffer. The tribunal has taken these comments into consideration when making this decision.

12. In the tribunal's view, the six month period during which no lift was available must be taken into consideration, as must the applicants actions that resulted in the lift works. The respondents have been denied the opportunity of engaging with the applicant in the consultation process, and despite providing an alternative quotation, this has been disregarded by the applicant. The tribunal finds that there has been prejudice to the respondents that should be reflected in the decision and that dispensation should be granted on terms.

13. The terms which the tribunal applies are that, given the applicants involvement in the removal of the lift buffer, none of the costs of remedial works including fees should be charged to the leaseholders.

Reasons for the decision:

14. The tribunal is satisfied that the works were urgently required. There was a safety risk but the applicant unreasonably delayed having works carried out, especially bearing in mind that the block comprises 5 stories, and it was unreasonable to expect leaseholders to either remain in their flats or use the staircase for such a long period of time.

15. In the circumstances the applicant had time to undertake the consultation in full, and the respondents would have engaged in the process.

16. The tribunal also takes into consideration that despite the lift becoming inactive in March 2022, no application for dispensation was made until August, during which period consultation could have been commenced but was not.

17. Overall, the tribunal considers that dispensation should be granted but, on the terms, specified above.

18. As noted above, the tribunal has no jurisdiction to determine compensation in relation to monetary loss of leaseholders..

Name: Aileen Hamilton-Farey Date: 22 February 2023

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).