



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

<b>Case reference</b>	:	<b>CAM/38UB/LDC/2018/0016</b>
<b>Property</b>	:	<b>Hightown House, Hightown Gardens, Banbury, OX16 9GG</b>
<b>Applicant</b>	:	<b>T H Kinglerlee &amp; Sons Ltd.</b>
<b>Respondents</b>	:	<b>the long leaseholders of flats 4-14 at the property</b>
<b>Date of Application</b>	:	<b>31<sup>st</sup> August 2018</b>
<b>Type of Application</b>	:	<b>for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 (“the 1985 Act”))</b>
<b>Tribunal</b>	:	<b>Bruce Edgington (lawyer chair) David Brown FRICS</b>

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## DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to repair the lift serving the property.

### Reasons

#### **Introduction**

2. This application was made for dispensation from the consultation requirements in respect of ‘qualifying works’ to the lift serving the property which had broken down and could not be used. It had broken down on several occasions between January and March 2018 but the fault was evidently mis-diagnosed by the company employed to maintain the lift. The Applicant then refers to other companies being involved and a faulty lift motor being diagnosed.
3. The property is a purpose built 3 storey block of 14 apartments, 11 of which contribute to the cost of maintaining the lift. The block was said to have been completed in 2015. The cost of repairs is said to be £4,152.00 inclusive of VAT.

4. The Tribunal chair issued a directions order on the 12<sup>th</sup> September 2018 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 30<sup>th</sup> September 2018 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 25<sup>th</sup> September. None were received by the Tribunal.

### **The Law**

5. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the management company's proposals. Those proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the management company must give its response to those observations.
6. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

### **Conclusions**

7. The Tribunal is concerned that the apartment block appears to have been completed 3 years ago but there is no indication in the papers as to why the construction company or the company that designed and/or installed the lift has apparently not been approached. Without knowing the detail, it would certainly seem that a lift in an apartment block requiring several thousand pounds of repairs within 3 years of installation may indicate a breach of contract.
8. The Tribunal is also concerned about the delay. The application form dated 31<sup>st</sup> August 2018 but not received by the Tribunal until 12<sup>th</sup> September 2018, refers to the multiple failures of the lift and then says that "*Due to the length of time the lift has been out of service, which is almost five months, and also the fact that there is a disabled resident living in one of the top floor flats who relies on the lift for gaining access from the building, we are seeking dispensation from the statutory consultation procedures...*".
9. The quotation relied upon by the Applicant is from Ideal Lifts Service Ltd. In fact they quoted £3,460.00 plus VAT for a 'budget' repair of the pump motor on the 25<sup>th</sup> May 2018. One wonders why a consultation was not started at that time. There was a meeting of leaseholders on the 25<sup>th</sup> June 2018 but no real indication of what happened at that meeting. Finally, it has

been said that the Tribunal agreed to determine this matter on or after the 30<sup>th</sup> September 2018 and yet the bundle of documents for the Tribunal to use for the determination was not delivered by the Applicant until 17<sup>th</sup> October.

10. Having set out these matters of concern, all the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
11. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, the lift had ceased working and needed urgent repair.
12. It is self-evident that repair works were and are required. The Tribunal therefore finds that whilst there may have been prejudice caused by the delays and the apparent lack of involvement with the installers, there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted.
13. If there is any subsequent application by a Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of the necessary parts at the time of the repairs. The Applicant will also have to explain what claims have been made against the original installers.



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**Bruce Edgington**  
**Regional Judge**  
**19<sup>th</sup> October 2018**

#### **ANNEX - RIGHTS OF APPEAL**

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.