



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

Case Reference : **LON/00AJ/LDC/2022/0063**

Property : **Flats 10-138 Issigonis House, Cowley Road, Acton, London W3 7UJ**

Applicant : **Shepherds Bush Housing Association**

Representative : **Capsticks Solicitors LLP**
Contact: Kirsten Taylor

Respondents : **129 leaseholders at the property**

Representative : **None**

Type of Application : **Dispensation from consultation**

Tribunal : **Mr I B Holdsworth FRICS MCI Arb**

Date and venue of hearing : **26 July 2022**
Remote determination

DECISION

The Tribunal determines to allow this retrospective application to dispense with the consultation requirements imposed by Section 20 of the Tenant Act 1985 in respect of emergency lift works to the Cowley Entrance lift at Issigonis House provided these works fall under the Landlord's obligations contained in the leases of the flats. The estimated cost of the works is £100,290.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27a of the Act.

The Tribunal directs the Applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the building.

The Application

1. The Applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act (the “**Act**”). The application affects 129 residential leaseholders situate at Flats 10-138 Issigonis House, Cowley Road, Acton, London W3 7UJ (the “**Property**”). The names and addresses of the respondent leaseholders are annexed to the application form.
2. The Applicant asserts that it is necessary for works to be carried out at this property to remedy inherent defects with the lift resulting in frequent and regular breakdowns.

Background

3. The Property is a four-storey residential development of flats containing 129 self-contained dwellings. The building is served by two lifts.
4. The Tribunal are told the lift was installed 11-years ago as a budget “package” design. The Applicants representative explain that the Control System and Shaft Equipment are of poor quality, but the core structural elements remain sound.
5. The Tribunal are informed maintenance of the control system has become more difficult in recent years as many of the spare parts have to be ordered and purchased from Spain. There is a long lead time for delivery of spare parts, and this has resulted in the lift being out of order for periods of weeks or months at a time.
6. The Applicants submission explains the frequency and severity of the Lift breakdowns has increased over the last 12 months. The Tribunal understand the lift has failed 13 times during the last year, remedial work was required on 8 occasions and there were 2 entrapments due to the failures.
7. The necessary lift upgrading works are described at page 125 of the bundle as follows:
 - Replace Control Panel with modern alternative.
 - Overhaul Drive Unit.
 - Replace shaft switches, levelling sensors and limits.
 - Replace Door Operator.
 - Replace Car and Landing Call Stations.
 - Rewire entire installation to suit new equipment.
 - Any other unforeseen or necessary works arising out of the works stipulated.
8. The Applicant served a Notice of Intention on 5 July 2021 to advise the Tenants that necessary remedial works to the lift were required. On 30 August 2021 the Tenants were issued with a Statutory Notice of Estimates which provided details of quotations obtained from three specialist lift contractors. The Applicants, Shepherds Bush Housing

Association (SBHA) confirmed their intention to appoint Nova Lift Company Ltd to undertake the works at a cost of £100,290 inclusive of VAT.

9. Capstick Solicitors, the Applicants representative in their submission acknowledge that Tenants were given only 7 days to respond to the Statutory Notice prior to instruction of the contractor to undertake the works. They claim this reduced and limited consultation period was necessary to ensure necessary plant and equipment could be sourced in sufficient time to allow works to proceed in the first quarter of 2022.
10. The Tribunal is presented with copies of the Notice of Intention at page 124 of the bundle and Statutory Notice of Estimates at page 128. A copy of a letter sent to all Tenants informing of a start on work dated 19 January 2022 is also included at page 132.
11. The Applicant received no response from leaseholders after issue of the Notices.
12. The lift works were completed on 21 April 2022.
13. The tribunal are told the Applicant has received four responses from leaseholders following the application to Tribunal for retrospective dispensation from consultation. Details of these representations are provided at pages 134-139 of the bundle. Only one respondent made a submission, the other respondents made only objections to the application. The submission made by Fauziah Hashmi of flat 125 Issigonis House is included in the bundle at page 140-142.
14. Ms Hashmi explained to tribunal in her submission that the frequent failure and breakdowns of the lift has existed since 2009. She contends they were caused by a low cost and poor-quality lift installation. She disputes the proposed lift works were emergency works given the long-standing difficulties encountered by the residents at the block. She made no comment about prejudice caused to her or other residents by any lack of consultation over the works.
15. The Applicants and their representatives, Capsticks Solicitors refute the accusations about the delay in lift replacement works. They argue the cost of replacement needed to be justified and that extended maintenance of the original apparatus was appropriate to ensure best value from service expenditure for the Tenants.
16. Applicants now seek retrospective dispensation from the statutory consultation scheme due to the urgency of the necessary works. They highlight the inconvenience to Tenants during the frequent and regular periods of lift breakdown, the health and safety risks of entrapment and the increased service charges arising from frequent lift maintenance call outs. They also envisage the supply of parts for the lift to remain difficult and protracted.

17. The Tribunal notes that the only issue which we are required to determine is whether it is reasonable to dispense with the statutory consultation requirements.

The Application

18. On 4 May 2022 the Tribunal gave directions which were subsequently amended on 22 June 2022 after a request from the Applicant. A reply form was attached to the directions to be completed by the leaseholders who oppose the application. The Applicants provided all leaseholders, residential sub-lessee, and other relevant leaseholders with copies of the Directions, Application, Statement of Case and supporting documents. The Tribunal notified the parties in the Directions that we would determine the application based on written representations unless any party requested an oral hearing. There was no request from any leaseholder or Applicant for an oral hearing.

Statutory Duties to Consult

19. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
20. The Landlord is obliged to serve leaseholders and any recognised Tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.
21. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate 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.”

Determination

22. This determination relies upon a 194 page bundle of papers which included the application, the Directions, a Statement of Case and supporting documents.
23. The bundle contains detailed works justification, a description of the proposed works and a confirmed cost quotation.
24. The Supreme Court's decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
25. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
26. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
27. The burden is on the Landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
28. The Tribunal is satisfied that the works are of an urgent nature, and they are for the benefit of and in the interests of both Landlord and leaseholders in the Property.
29. They noted that four leaseholders objected to the grant of dispensation, and one made submissions to justify the objection. The Tribunal cannot respond to objectors who make no submission.
30. The Tribunal acknowledges the matters raised in the respondent's submission. They address the long-standing problem with the maintenance of the lift and the failure of the Applicants to remedy the defects at an earlier stage. These may be issues to be considered should an application be made to Tribunal to determine the reasonableness and payability of the charges for the works in the future. The matters raised in the Tenant's submission do not prove prejudice was caused to the residents by the restricted consultation following the issue of the Statutory Notice.

31. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.
32. The Tribunal notes a brief works description is available for review in the submitted bundle and this is provided with works quotations from three specialist contractors. These are at pages 128 and 129 of the bundle. The Tribunal accepts that the residents suffered a reduced period to comment on these quotations or consult prior to commencement of the lift works scheme. They are not persuaded an extended consultation period in accordance with Section 20 procedures would have produced a different commercial outcome. For this reason, the Tribunal are unable to identify any financial prejudice to the leaseholders due to the failure to consult at this time.
33. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted in accordance with the timetable afforded by the 2003 Regulations. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, with a reduced opportunity to make observations and to comment on the works or to nominate a contractor, were likely to suffer any relevant prejudice.
34. The Tribunal having considered the evidence is satisfied that it is reasonable to retrospectively dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are retrospectively dispensed in respect of the lift works described in the Statutory Notice of Estimates date 30 August 2021, to be undertaken by Nova Lift Company Ltd to remedy the defects with the Cowley Road Entrance lift at the Property, subject to these works falling under the Landlord's obligations under the leases of the flats.

Chairman: Ian B Holdsworth, Valuer Chairman

Dated: 26 July 2022