12377

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LDC/2017/0090**
Property	:	**Flats 1-9 Nicola House, 33-35 High Street, London SE25 6HA**
Applicant	:	**London and Continental Investments (Friar St) Ltd**
Respondent	:	**The leaseholders listed in the schedule to the application**
Type of Application	:	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Members	:	**Judge Richard Percival**
Venue of Deliberations	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**4 September 2017**

DECISION

Decisions of the tribunal

(1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of works to the lift. The application was allocated to the paper track.

2. The Tribunal gave directions on 14 August 2017, which provided for a form to be distributed to the tenants to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms was 28 August 2017. No forms have been received by the Tribunal. In a statement covering the bundle provided, the respondent states that it has received written agreement from flats 2, 3 and 8 and verbal agreement from flats 1, 6, 7 and 9. In the application, the respondent also states that it has written to the leaseholders to explain that it is applying for dispensation.

The property and the works

3. The property is a four storey purpose built block of flats, with a commercial unit below.

4. The proposed works are described as urgently required health and safety measures.

5. It appears that in February 2017, the lift was inspected by Crown Acre Lifts at the commencement of a maintenance contract. The engineer had a minor accident as a result of a defect to the bolt on the motor room door, and specified in his report a number of repairs necessary before the lift could safely be maintained. The report includes a number of other recommended repairs or improvements. These are costed, sometimes approximately, but no total is given. The Tribunal has also been provided with a report by Allianz Engineering, based on an inspection in April 2017. This report provides a list of recommendations which appears to be the basis for the works for which dispensation from the requirements of section 20 are now sought.

6. That work comprises:

(i) The installation of safety detector edges to the lift doors;

(ii) The installation of a lockable electrical isolator;

(iii) The installation of a safe ladder to provide access to the motor room;

(iv) The installation of lighting in the motor room;

(v) The installation of control panel and door gear upgrades;

(vi) To replace the main ropes;

(vii) To update the over-speed governor;

(viii) To rectify various minor defects described as "insurance items", such as excessive cill gaps and repair of the car light; and

(ix) The installation of an autodialler alarm.

7. A quotation of £19,360 plus VAT has been obtained from The Elevator Group for these works. In its letter to the leaseholders dated 12 July 2017, the respondent refers to a quotation from Crown Acre Lifts (at £22,000). The Tribunal has not seen a like-for-like quotation from this company, but it may be that the "quotation" is generated from the relevant approximate costings in Crown Acre's report.

8. The respondent states that the lifts fails on a weekly or fortnightly basis, occasioning call out charges. The works specified are, at least largely, directed at health and safety matters rather than defects causing breakdowns, but clearly these must be rectified for adequate maintenance to take place.

9. The Tribunal has been provided with the lease to one flat, which requires the leaseholder to contribute one tenth of the cost of maintenance of the lift.

Determination

10. The sole issue for determination is whether it is reasonable to dispense with the consultation requirements imposed by section 20 of the 1985 Act.

11. The works contended for are, it appears, necessary for the health and safety of both engineers maintaining the lift and, in some cases, the leaseholders and their licensees using the lift. In general, repairs to a lift in a four storey building are capable of imposing a significant degree of urgency. In this case, further urgency is added by the need to protect the health and safety of both residents and the engineers charged with repairing faults. The Tribunal also notes in particular that there is no recorded opposition from any of the leaseholders.

12. Accordingly, the Tribunal allows the dispensation.

13. If the cost of the works is excessive or if the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to the tenants to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

Name: Judge Richard Percival **Date:** 4 September 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(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) the appropriate 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.]

Section 20ZA

(1) Where an application is made to a leasehold valuation 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.