

9521



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

A

Case Reference : **LON/OOBE/LDC/2013/0118**

Property : **Flats 1 to 34, 20 New Globe Walk,
London, SE1 9DX**

Applicant : **Twenty New Globe Management
Co. Ltd.**

Representative : **Rendall & Rittner Ltd.**

Respondents : **Various Lessees of Flats 1 to 34, 20
New Globe Walk, London SE1 9DX
Place, London E8 1LP as per list
attached to the application.**

Representative : **None notified**

Type of Application : **For dispensation of all or any of the
consultation requirements**

Tribunal : **Judge Goulden
Mr L Jarero BSc FRICS**

**Date and venue of
Hearing** : **Thursday 5 December 2013 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **5 December 2013**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the 1985 Act for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985 (" the Act"). The application was dated 30 October 2013 and was received by the Tribunal on 1 November 2013. A list of the Respondents was attached as a schedule to the application.
2. Directions of the Tribunal were issued on 5 November 2013. Forms for completion by the lessees in respect of the S20ZA application were attached to the Tribunal's Directions which the Applicant was directed to send to each lessee.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.
4. Fifteen completed forms from various lessees have been received by the Tribunal, all of which were in support of the application. No written representations were received from or on behalf of any of the Respondents.

The hearing

5. The matter was determined by way of a paper hearing which took place on Thursday 5 December 2013.

The background

6. 20 New Globe Walk, London, SE1 9DX1 ("the property") which is the subject of this application is described in the application as a converted new build block of flats, built in approximately 2002, containing 34 flats and one commercial unit. The Applicant confirmed that the lessee of the commercial unit does not contribute to the lift costs.
7. The proposed works related to the lift at the property. The application stated that the works required were proposed replacement of the control panel to the lift and associated ancillary switching; complete rewiring including travelling flexes; replacement of car and landing position indicators; replacement of hydraulic power unit including

tank, pump and motor, valve block, heater, oil cooler and oil and installation of thermostatically controlled motor room extractor fan. It was maintained in the application *"the lift is unreliable and we have experienced a high number of breakdown and passenger trappings. As a result the lift has been out of service for lengthy periods of time. It is essential that residents have use of the lift to access their flats, carry shopping and to move into their flat on purchase. There is also at least one resident who has a young child and therefore needs to use the lift for their buggy"*.

8. A Notice of Intention under the Act dated 18 October 2013 had been sent to the lessees, together with an explanatory letter of the same date, and together also with a form of waiver (prepared by or on behalf of the Applicant). The cost of the works was said to be in the region of £32,000 plus VAT.
9. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. A copy of the lease of Flat 15 dated 12 June 2002 was provided to the Tribunal. The lease required the landlord to provide services and the lessee to contribute towards the costs by way of a variable service charge. With no information to the contrary, it is assumed that all the residential leases are in essentially the same form.

The issues

11. The issues are as set out in paragraph 7 above.

The Applicant's submissions

12. Written submissions dated 19 November 2013 were received on behalf of the Applicant from Rendall & Rittner, the Applicant's managing agents.
13. The Applicant contended, inter alia, *"on 25 September 2013, the lift broke down and it became apparent following the investigations that took place after the breakdown that it was not possible to carry out repairs to the lift to provide a reliable service for residents and that modernisation works were required. It was previously thought the lift could be repaired and kept in service. Since residents require use of the lift to access their flats, carry shopping, to enable new residents to move into their flats and for residents with children to use their buggies, it is essential to have a lift that provides a reliable service and we are therefore applying to the tribunal for dispensation, so these works can be carried out as soon as possible. The leaseholders are fully supportive of our application and we have not received any*

forms in opposition of the application. We have received forms from a majority of the leaseholders supporting our application.....tenders for the works will be returned by 25th November and we hope to be in a position to instruct the works as soon as possible after these tenders have been returned” .

14. The Tribunal has been provided with a copy of the specification of works, together with an email dated 31 October 2013 from the Regional Director of Dunbar & Boardman Partnership. The email stated “*further to our review of the lift installation at the above property and the ongoing reliability and operational issues that are being experienced, we are of the view that the control system requires urgent replacement to mitigate the risk of further and extended lift failures. The existing equipment is of Greek supply and manufacture from whom any replacement parts, software and support are sourced. However, given the age of the equipment, it is no longer produced resulting in the extended downtime following failures whilst alternative solutions can be achieved where possible, leaving the residents of this 7 floor property without lift service. We are of the opinion that the lift control system should be replaced as soon as is possible to mitigate this ongoing risk with a system of current manufacture and ideally of UK supply*”.
15. No quotations/estimates were supplied.

The Respondent’s submissions

16. No written representations were received from or on behalf of any of the Respondents.

The Tribunal’s Determination

17. S20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
18. Dispensation is dealt with by S 20ZA of the Act which provides:-

“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”

19. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period;**

and

- (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the

person by whom the observations were made state his response to the observations.

20. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
22. No Respondent had challenged the consultation process. No written submissions have been received from or on behalf of any of the Respondents.
23. The Tribunal is critical of the Applicant in respect of the manner in which the case was presented. The Applicant contended that the lift broke down on 25 September and "*it became apparent following the investigations that took place after the breakdown that it was not possible to carry out repairs to the lift to provide a reliable service for residents and that modernisation works were required*". The Tribunal would expect to be informed of how the lift broke down, full details of the investigations which had taken place and preferably a log showing complaints which the agents had received from residents as to lift failures.
24. In addition, the Tribunal would have expected a survey report from the lift contractors, rather than merely a brief email of 31 October 2013 stating that the lift required replacement as soon as possible. The Tribunal was not given any information as to the reason why that email had been sent or what enquiry had been made in order to elicit the response of 31 October 2013.
25. Further, the Applicant's representatives informed the Tribunal that tenders for the works were to have been returned by 25 November 2013. It is somewhat surprising that these have not been forwarded to the Tribunal for consideration. It is not known to whom the tenders were sent or even how many contractors were approached.
26. The "*forms of waiver*" sent to the lessees by the Applicant's representatives with their letter of 18 October 2013 were clearly insufficient, as was noted in paragraph 3 of the Tribunal's Directions of 5 November 2013.
27. The Tribunal was not advised whether the lift to be modernised was the sole lift at the property. It is assumed, with no evidence to the contrary, that there is only one lift. With a sole lift breaking down, this clearly

would present a problem for a building on seven floors comprising 34 units.

28. With some reluctance, the Tribunal is satisfied that, in the particular circumstances of this case, the Respondents are not unduly prejudiced and it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.
29. The Tribunal directs that the Applicant shall send a copy of this Determination to all the Respondents within fourteen (14) days of the date of this Determination.
30. **It should be noted that in making its Determination, and as stated in paragraph 5 of the Tribunal's Directions of 5 November 2013, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's Determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: J Goulden

Date: 5 December 2013