



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

Case reference : **LON/00BJ/LDC/2019/0070**

Property : **Various Properties across the
London Borough of Wandsworth.**

Applicant : **The Mayor and Burgesses of the
London Borough of Wandsworth**

Representative : **Ashfords, Solicitors.**

**Attendance at the
hearing on behalf of the
Applicants** : **Ms. E. Gibbons of Counsel
Mrs. E. Parrette, Leasehold &
Procurement Manager.**

Respondent : **Various Leaseholders as per the
application.**

Representative : **In person**

**Attendance at the
hearing on behalf of the
Respondents** : **Ms. E. Atkins
Ms. J. Catchetoorian
Mr. S. Morris
Mr. Salt
Mr. Quereshi
Application for Dispensation from
the requirements to consult
leaseholders under S.20ZA
Landlord & Tenant Act 1985.**

Type of application : **Application for Dispensation from
the requirements to consult
leaseholders under S.20ZA
Landlord & Tenant Act 1985.**

Tribunal member(s) : **Aileen Hamilton-Farey
Mrs. Alison Flynn MA, MRICS**

Date of decision : **7 October 2019.**

DECISION

Decisions of the tribunal

- (1) The tribunal having considered the application at a hearing on 2 October 2019, exercises its discretion and grants dispensation to the applicants from the requirements to consult leaseholders in relation to the Part B five-year contract for lift repair and maintenance services.
- (2) The applicants shall send a copy of this decision to all affected leaseholders, and shall place a copy on its website – remote from any website relating to the ‘sprinklers’ application’ or any other major works contracts, and shall notify respondent leaseholders and confirm to the tribunal that it has been so displayed.

The application

1. By an application dated 14 August 2019, the applicant sought a determination pursuant to S.20ZA of the Landlord & Tenant Act 1985, to dispense with the requirements to consult leaseholders in relation to Part B of a five-year, Qualifying Long Term Agreement, in relation to repair and maintenance contracts for 304 lifts situated in 148 blocks of flats within the Borough.
2. The tribunal issued directions on 16 August 2019 that required any respondent leaseholder who opposed the application to submit a statement in response on or before 30 August 2019. This time was subsequently extended. The tribunal received applications from several leaseholders to the effect that they required a hearing, and on 5 September, the tribunal instructed the applicants to inform all of the leaseholders of the hearing date.
3. In the event, the tribunal received replies from 8 leaseholders who opposed the application, several gave their reasons for doing so. Five leaseholders attended the hearing, and their names are shown on the front of this decision.
4. At the hearing, the applicants were represented by Ms. E. Gibbons of Counsel. Ms. Parrette, the Leasehold and Procurement Manager for the applicants gave evidence.

The Applicants’ Case:

5. Ms. Gibbons called Mrs. Parrette to give evidence. We were told the applicants had two contracts for lift repairs and maintenance (Part A and Part B). Both contracts were subject to the OJEU Regulations and had been advertised in the Official Journal on or around 16 October 2018. Due to the fact that this is a Qualifying Long-Term Agreement and the applicant is a Public Body, it was necessary to advertise in

OJEU with the result that leaseholders would not have the right to nominate contractors to tender for the contracts. However, residents would receive the Notice of Intention and Notice of Proposals in accordance with the S.20 Regulations.

6. The tribunal was informed that approximately 20 years ago, the applicants lost the management of some properties, and that when they came back into management it resulted in two lift maintenance contracts being in place. To resolve this issue, the applicants arranged for their lift contracts to co-terminate on 31 August 2019. They divided the contracts into two separate contracts (A and B) with each contract having approximately 304 properties. Precision Lifts were the contractors who were responsible for repairs and maintenance to all of the lifts prior to this tender exercise and as a result they were included in the tender list.
7. The tender process required each contractor to specify which contract they preferred. Following the tender process, the first contract was awarded to Amalgamated Lifts who produced the cheapest quotation and preferred the Part A contract. Amalgamated also produced the cheapest quotation for the Part B contract, but due to the applicants contracting procedures, it was not possible to award both contracts to the same contractor, because if the contractor became insolvent, for example, this would affect all of the lifts. By spreading the risk, the applicant could be sure that at least half of the lifts could be maintained.
8. Precision Lifts produced the next lowest tender for Part B and also expressed a preference for this contract.
9. On 10 July the applicants wrote to the successful contractors offering them the contracts. On 18 July Precision having conducted a final review, decided that they did not wish to proceed and declined the contract. Due to the inability to use Amalgamated Lifts, it was necessary for the third cheapest contractor, Liftec Lifts to be offered the contract. Precision were asked if they would continue with their existing contract until after the 31 August when a new contractor could be in place, but they declined, and it was therefore necessary for the applicants to have a life maintenance contract in place for 1 September 2019, when Precision's contract came to an end.
10. The contract was awarded to Liftec on 29 July because eight members of the Precision staff were protected by TUPE, and it was necessary to transfer them over to Liftec.
11. Letters were sent to each of the affected leaseholders on 9 August, but it was not possible for the applicant to carry out any further consultation, and it is for this reason that they seek dispensation from those further requirements to consult. The applicant believes that no prejudice has

been caused to the respondents because of the lack of consultation, in line with the decision of *Daejan v Benson*¹

The Respondents' case.

12. As noted above, eight respondent leaseholders replied to the tribunal and applicants. Their responses were contained within the bundle and were in effect of a similar nature. The respondents believed that the dispensation application would '*withdraw consultations and with information on future decisions made to decide on the future rights to leaseholders*'. Some of the respondents also said that '*leaseholders have very little rights... this hampers the natural process of the law and puts leaseholders at a severe disadvantage*'.
13. The tribunal is not convinced by these arguments. The rights of leaseholders enshrined in the Landlord & Tenant Act 1985 remain, especially those under S27A of the Act which enables a leaseholder to challenge service charge costs. The dispensation application does not disturb those rights, nor the obligations of the landlord to consult with leaseholders on other contracts.
14. As noted above, six leaseholders attended the hearing. Mr. Salt did not oppose the application but said that it should be possible for the applicants to in effect 'fine' a contractor who pulled out of the process at a late stage, causing additional expense to the applicants. Mrs. Parrette responded to say that the applicants were considering a 'bid bond' might form part of future negotiations but was not applicable in this instance.
15. Other leaseholders attending had questions for Mrs. Parrette, one of which was that some lifts were to be refurbished and how would this affect this maintenance contract. Mrs. Parrette confirmed that any refurbished lift would carry a 12-month defect liability period, whereby the contractors would be responsible for defects (although not repairs due to misuse etc) during that period, and the affected leaseholders would see a reduction in their service charges for this item.
16. Mrs. Parrette gave out her telephone number and address to those leaseholders attending, so that any questions regarding the lift refurbishment contracts could be answered.

Reasons for our decision:

17. We find on balance, that the applicants have taken the only practical steps they could in this instance. They were in a position where the current maintenance contract was due to expire, and they could not

¹ *Daejan Investments Limited v Benson and Ors* [2013] UKSC 14

leave residents in a situation where the lifts might fail and not be repaired.

18. None of the leaseholders have suggested that they would suffer prejudice if dispensation was given, and none of the residents has suggested any other way in which this contract might have been procured in the necessary timescales.
19. We find, that the application should succeed and dispensation from the further requirements to consult be granted in relation to the Part B contract.

Name: Aileen Hamilton-Farey **Date:** 7 October 2019

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).