



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

**Case reference** : **CAM/22UD/LDC/2015/0010**

**Property** : **Drake House,  
Sir Francis Way,  
Brentwood,  
CM14 4TG**

**Applicant** : **Brentwood Borough Council**

**Respondents** : **Mrs. L.P. Scott-Horne (90)  
Mr. A. Kayum and Mrs. R. Aktar (92)  
Miss. S.J. Fowler (94)  
Mrs. L.A. Walker (96)  
Mr. P.R. Anderson (99)  
Barrington Place Developments (120)  
Mr. & Mrs. C. Kennedy (124)  
Mr. S. Flight (127)  
Ms. F. Leedham (128)  
Mr. & Mrs. S.M. Clark (129)  
Mr. D.J. Salch (131)  
Mrs. J.A. Arbon (133)**

**Date of Application** : **10<sup>th</sup> July (rec'd 16<sup>th</sup>) 2015**

**Type of Application** : **for permission to dispense with  
consultation requirements in respect of  
qualifying works (Section 20ZA Landlord  
and Tenant Act 1985 ("the 1985 Act"))**

**Tribunal** : **Bruce Edgington (lawyer chair)  
Roland Thomas MRICS**

**Date and venue for  
Hearing** : **5<sup>th</sup> August 2015 at the Holiday Inn, Brook  
Street, Brentwood, Essex CM14 5NF**

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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 2 lifts serving the property.

## **Reasons**

### **Introduction**

2. This application is for dispensation from the consultation requirements in respect of 'qualifying works' to the 2 lifts serving the property, 1 of which had broken down and could not be used.
3. Drake House is a purpose built 10 storey concrete block consisting of 44 bedsits and 1 and 2 bed-roomed flats built in 1964. Lifts feed alternate floors other than the top floor which both lifts serve. There are said to be vulnerable residents on various floors. The Respondents are long leaseholders of the flats let on long leases. There are 32 flats occupied by the Applicant's periodic tenants. The lifts were not part of the original build and were replaced over 25 years ago.
4. The evidence of Steven Chapman, Property Manager, is as follows. In January 2015, the lifts started to show signs of needing repair. The left hand lift would stop on a floor and then shut down. Contractors would attend and reset the lift. In May 2015, someone became trapped in a lift and on the 12<sup>th</sup> May someone vandalised the left hand lift. A report from the maintenance engineers said that a Kone specialist technician had attended on site and as the lift was over 25 years old. Most key controller components were now obsolete.
5. The Applicant was made aware that the lifts needed replacing. However, so did the communal boiler system and the Applicant was concerned about the expense of replacing both. The cost of replacing the boiler system was £450,000 and each new lift would cost £80,000. The advice received by the Applicant was that replacing the lift panels and mechanisms would extend the life of the lifts by some 8-10 years and the new parts could then be transferred to the new lifts. The cost was to be £21,350 per lift. A decision was taken to proceed with this option.
6. The problem faced by the Applicant was that one lift had failed and was out of service which was placing an extra burden on the other. As the right hand lift only serves every other floor, some disabled residents were having problems. Due to this and the inability to obtain parts should the remaining lift fail, a very urgent solution was needed. Instructions were given to the contractor to commence work immediately by replacing the lift panels and mechanisms as per the above quotation.
7. A procedural chair issued a directions order on the 16<sup>th</sup> July 2015 timetabling this case to its conclusion. One of the directions said that any Respondent who wanted to give a view about the application, should file and serve a statement in reply to the application by 31<sup>st</sup> July. None was received. However, the Applicant had previously received several requests to effect repairs as soon as possible.

### **The Law**

8. 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 landlord's proposals. The landlord's 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 landlord must give its response to those observations.

9. 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.

#### **The Lease terms**

10. No copy lease was included in the Applicant's evidence but as this application is being made, it is assumed that the Respondents have an obligation to contribute towards the cost of maintaining and repairing the lift, which would be a normal condition. However, the Respondents should check their leases if they have any doubts about this.

#### **Inspection**

11. In view of the clear evidence filed by the Applicant and the possibility that the Tribunal members would not have been able to see the working parts of the lifts or make any judgment about their efficiency, it was decided not to inspect the property before the hearing.

#### **The Hearing**

12. The hearing was attended by Steve Chapman and Paul Hallums – property manager and building surveyor respectively from the Applicant – and Paul Knowles who is the service manager for the lift company. They explained that the works were due to be completed within the week. None of the Respondents attended or were represented.
13. It was explained that the residents were of varying ages. Some were young but some were disabled and frail. They were spread over the whole building.

#### **Conclusions**

14. 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 what is to be determined by a Tribunal dealing with this issue, which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
15. 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 lifts were in need of replacement. One lift had ceased working, parts for the other lift were impossible to obtain and there were occupants who were said to rely heavily on the lifts.

16. It is self-evident that repair works were required in view of the number of call outs needed. The delay which would have been caused by undertaking the full consultation exercise would clearly appear to have been extremely inconvenient to the Respondents. There is no evidence that the full consultation process would have resulted in different works or a lower cost. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted.
17. 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.

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**Bruce Edgington**  
**Regional Judge**  
**5<sup>th</sup> August 2015**