12296

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/26UK/LDC/2017/0010**
Property	:	**Chiltern House, 24, King Street, Watford Herts WD18 0BP**
Applicant	:	**Glenmore Residential Limited**
Representative	:	**Mrs S Colley of Red Rock Property Managment**
Respondent	:	**The leaseholders at the Property**
Representative	:	**Mr S Pressinger**
Type of application	:	**To dispense with the requirement to consult lessees (s20ZA Landlord and Tenant Act 1985)**
Tribunal member	:	**Tribunal Judge Dutton** **Miss M Krisko BSc (Est Man) FRICS**
Date and venue of hearing	:	**28th July 2017 at the Employment Tribunal, Watford**
Date of decision	:	**1st August 2017**

DECISION

DECISION

The Tribunal determines that dispensation should not be given from the consultation requirements in respect of the works required to the lift at the property Chiltern House, 24 King Street, Watford for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

2. Chiltern House, 24 King Street, Watford (the Property) is a converted building comprising three floors of residential accommodation above commercial units. It would appear that the property was converted during 2015 as the leases run for a period of 125 years from 1st January 2015. There are 14 long leaseholders affected by this application so it is stated by Red Rock Property Management, although Mr Pressinger spoke to 15 flats.

3. The application states that repair works are required to the lift at the Property. It appears that the lift has been out of action since March 2017. A chronology, headed a "statement of Case" sets this out and is not challenged by the leaseholders.

4. Directions were issued on 20th June 2017 and the matter came before us for hearing on 28th July 2017.

5. Prior to our determination we had available a bundle of papers which were, to be frank in a disorganised mess. Not only were they not numbered nor in chronological order, but they did not include a copy of a lease, the application nor the directions. They did include quotes from Langham Lifts Limited, of which there were two for different works, from Ambassador Lift Company Limited and from the present lift contractor Amax Lifts. The sums quoted where substantially apart, as was the suggested work.

6. A majority of the leaseholders objected to the application and through Mr Chavda, the lessee of flat 12, wrote to the Tribunal challenging the basis of the application.

7. The issues on the part of the leaseholders were in essence that the lift appeared to be dated and had not been replaced at the time of the conversion of the building, a fact, it would seem, that was not made clear to the purchasers of the flats. It seems the lift car had been glorified but the workings may not have been.

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[1] **See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4**

8. Another issue is an apparent email to the freeholder in which it is said "*sadly the lift control manufacturer is no longer in operation so we can't source the parts required or more importantly the lift program eeprom. Even if we attempt a repair which is costly it may not rectify the problem and our client will have wasted money*". This information appears to have come from Amex

9. Notwithstanding this information the applicant still came before us on 28th July 2017 seeking dispensation from the works proposed by Amex.

THE LAW (SEE BELOW)

DECISION

10. We have considered the papers lodged. We heard from Mrs Colley for the landlord and from Mr Pressinger speaking on behalf of 11 of the lessees.

11. We were told that Glenmore had agreed to lend the money necessary for the repairs to be carried out, to be repaid by the end of the year, but was not seeking interest on the loan money.

12. Mr Pressinger stated that the lessees were frustrated that they had not been consulted. They had bought the refurbished flats thinking the lift was new. They wanted the opportunity of consulting with the freeholder and possibly putting forward their own contractor. However, they did not consider that any steps should be taken until an independent lift engineer had been engaged to conduct a survey to establish what the problem was and the best and most cost effective way of correcting the problem. It was accepted that this may well give rise to a more expensive repair or even replacement. They accepted also that this would delay the works and that this would cause inconvenience to occupiers, the majority of flats being sub-let. They also considered that the freeholder should have at least some financial responsibility for resolving the problem with the lift and may take the matter further if such a compromise cannot be reached.

13. We are not satisfied that it would be appropriate to dispense in this case. We appreciate that since the case of Daejan v Benson the need to consult appears to have declined and the lessees position covered if any prejudice is dealt with. We note that the lease provides that the service charge shall be a fair and reasonable proportion determined by the Landlord. However, in this case we are being asked to grant dispensation in respect of works for which there appears to be no guarantee that they will solve the problem and indeed may waste money. This, in our finding, is prejudicial to the respondents.

14. In those circumstances we decline to grant dispensation from the consultation requirements. We consider that an independent lift engineer should be engaged as quickly as possible to report on the condition on the lift and works required to give the lessees a fully functioning lift with some

ongoing guarantee. It is accepted that this may well cost more but the Landlord does need to consider the position.

15. Mrs Colley told us that there would be no claim for costs against the leaseholders. She agreed that we could make an order under s20C of the Landlord and Tenant Act 1985, which we do, considering it to be just and equitable in the circumstances of this case.

16. We hope that the parties can work together to solve this issue.

Andrew Dutton

Tribunal Judge

Andrew Dutton 1st August 2017

The relevant law

Section 20 of the Act

(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) a leasehold valuation 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.

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).