



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

**Case reference** : **LON/00AW/LDC/2021/0077**

**HMCTS Code** : **P:PAPERREMOTE**

**Property** : **38 Lennox Gardens, London, SW1X  
0DH**

**Applicant** : **The Wellcome Trust Limited**

**Representative** : **Savills (UK) Ltd**

**Respondents** : **The leaseholders as listed in the  
application**

**Type of application** : **An application for dispensation  
from the consultation  
requirements of s.20 Landlord and  
Tenant Act 1985**

**Tribunal member** : **Tribunal Judge Brandler**

**Date and venue of  
hearing** : **N/A**

**Date of decision** : **3<sup>rd</sup> June 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that I was referred to are in a bundle of 51 pages, the contents of which I have noted. The order made is described at the end of these reasons.

### **Decision**

1. The Tribunal grants the applicant retrospective dispensation from the statutory consultation requirements in respect of works carried out to 38 Lennox Gardens, London SW1X 0DH ("The building") on 23<sup>rd</sup> November 2017 and 14<sup>th</sup> December 2017. The costs incurred in respect of the works being a total of £3450.00 plus VAT.
2. Dispensation is granted on the condition that the applicant is to bear its own costs of this application, which should not be passed on to leaseholders.

### **Background**

3. The Freeholder is The Wellcome Trust Limited. Their managing agents are Savills (UK) Ltd.
4. The building is a masonry/brick building built in the early 1900's and converted into 7 flats.
5. Although it is suggested that there are various leaseholders of the 7 flats in the building, the only evidence of those leases is a list of names and email addresses. Only two of the flat numbers are identified, those of flats 3 and 6. The only lease provided relates to the "*fourth and fifth floor flat*".
6. On 16<sup>th</sup> March 2021 the managing agents submitted an application for dispensation from the statutory consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 for works to a lift at the property which was out of service following an alleged power surge in the area which blew the power supply to the lift.
7. The evidence provided to support the application is contained in a witness statement dated 24<sup>th</sup> May 2021 signed by Ruby Frampton who is employed by Savills (UK) Ltd. That witness statement provides that Savills took over the management of the building on 28<sup>th</sup> September 2017. It also sets out the details of the works to the lifts, but fails to provide the date on which the alleged power surge took place, when the lift failed, or when the works were carried out. It seeks nevertheless a dispensation on all of the consultation requirements as they "*were*

*unable to consult the leaseholders due to the urgency of reinstating the lift*” [18].

8. The two exhibits to that statement are two invoices from Aspect Lifts Ltd.
9. Exhibit 1 is dated 30/11/2017 and details that work was completed on 23.11.17 that involved “*Small repairs*” in the sum of £1250.00 plus 20% VAT which entailed “*Supplied and fitted a new transformer from the manufactures and replaced it along with a new LRR Contactor and also to replaced (sic) the Phase Failure Unit*” [49]
10. Exhibit 2: is dated 25/01/2018 and details that work was completed on 14.12.17 that involved “*Small repairs*” in the sum of £2200 plus 20% VAT which entailed “*Supplied and fitted 3 electronic inductor switches, 1 power supply card and 1 lag modification kit reset and returned the lift back to service*” [50]
11. The application fails to explain why there has been such a delay in making this application since the works were carried out in 2017.
12. There is no evidence to support a claimed power surge, a failed insurance claim or correspondence from the power provider refuting the claim of a power surge as stated in the application. The only reference to urgency is in the invoice dated 28/01/2018 for works carried out on 14/12/2017 which refers to “*returned the lift back to service*” [50]
13. On 19<sup>th</sup> April 2021 the tribunal issued directions. These included a direction to the applicant to send to each leaseholder a copy of the application with any accompanying documents, the directions and the tribunal’s covering letter. The applicant was also instructed to display a copy of both the application and the directions in a prominent place in the common parts of the Property and to confirm this direction had been complied with by 30<sup>th</sup> April 2021 by emailing confirmation to the Tribunal by 30<sup>th</sup> April 2021.
14. On 29<sup>th</sup> April 2021 an email was received from Ruby Frampton at Savills which confirmed only “*directions have been emailed to all leaseholders*”. No mention was made in relation to the application having been emailed to the leaseholders, nor was any mention made that the application had been displayed in a prominent place in the common parts of the building.

### **The leaseholders’ case**

15. None of the leaseholders have objected to this application, although the tribunal were not satisfied that the directions had been fully complied with. Specifically, there is no evidence that the application with

documentation has been sent to the Leaseholders nor displayed in the common parts.

### **Reasons for Decision**

16. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;

44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

17. It is not clear to the tribunal whether people listed in the schedule attached to the application are in fact leaseholders and if so the extent to which they are responsible for the costs of the investigation works.

18. The application failed to confirm that the application had been sent to the leaseholders and failed to confirm that it had been displayed in a prominent place in the common parts of the building as directed.

19. The evidence shows that the actual works were carried out on 23<sup>rd</sup> November 2017 and 14<sup>th</sup> December 2017 which suggests that the works were necessary and there is evidence of urgency in the invoice for works on 14<sup>th</sup> December 2017 which states “*returned the lift back to service*”.

20. The application for dispensation is granted, although we consider this application should have been made earlier than it was, given that the applicant commissioned works to be carried out in 2017. Instead, there was undue delay in making the application which was not received until 16<sup>TH</sup> March 2021.

21. We therefore make the following conditions of such dispensation

- (a) that the applicant is to bear its own costs of this application, which should not be passed on to leaseholders.
- (b) that the applicant must within 48 hours of this decision
  - (i) send the application dated 16<sup>th</sup> March 2021, all documentation referred to in the directions of 19<sup>th</sup> April 2021 and this decision to all the leaseholders by email, by delivery by hand or by first class post, and then confirm in writing to the Tribunal that this has been carried out
  - (ii) display the application dated 16<sup>th</sup> March 2021, all document referred to in the directions of 19<sup>th</sup> April 2021 and this decision in a prominent place in the common parts of the building, and then confirm in writing to the Tribunal that this has been carried out.

**Tribunal Judge Brandler**

**3<sup>rd</sup> June 2021**

**APPENDIX 1**  
**RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

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**APPENDIX 2**  
**RELEVANT LEGISLATION**

**Landlord and Tenant Act 1985**

20ZA. Consultation requirements: supplementary

- (1) Where an application is made to the appropriate 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.

**Service Charges (Consultation Requirements) (England) Regulations 2003.**

**Part 2 - consultation requirements for qualifying works for which public notice is not required**

*Notice of intention*

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) invite the making, in writing, of observations in relation to the proposed works; and
  - (d) specify—

- (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period;  
and
  - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

*Inspection of description of proposed works*

- 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.

*Duty to have regard to observations in relation to proposed works*

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

*Estimates and response to observations*

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a



recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
  - (a) from the person who received the most nominations; or
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
  - (c) in any other case, from any nominated person.
  
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
  - (a) from at least one person nominated by a tenant; and
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
  
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
  - (a) obtain estimates for the carrying out of the proposed works;
  - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

*Duty on entering into contract*

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
  - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.