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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0057/02/17

In the Matter of Newlands Court, Station Road, Llanishen, Cardiff, CF14 5HU

And in the matter of an Application under section 20ZA of the Landlord and Tenant Act 1985

TRIBUNAL	**Mr. Timothy Walsh (Chairman)** **Mr. Hefin Lewis (Surveyor)**
APPLICANT	**Wales and West Housing Association Limited**
RESPONDENT	**Ms. Madeline Fraser (and 34 others)**

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

The Decision in Summary

1. For the reasons given below the Tribunal grants the Applicant's application under section 20ZA of the Landlord and Tenant Act 1985 and dispenses with the requirement for the Applicant to comply, or to have complied, with the relevant consultation requirements under the Act and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 in relation to the material qualifying works. Namely, the necessary works of repair and refurbishment undertaken to the lift at the subject property in February 2017. In the Tribunal's view, it is reasonable to dispense with those consultation requirements on the facts of this case.

Representation

2. The Applicant is Wales and West Housing Association ("the Applicant"). It was represented at the hearing by one of its Housing Managers, Mr. Michael Halloran.

3. None of the tenants who might have been active respondents (as explained below) participated in the hearing.

The Application

4. This is an application brought under section 20ZA(1) of the Landlord and Tenant Act 1985 (as amended) ("the Act") seeking a determination dispensing with the consultation requirements in accordance with section 20(1)(b) of the Act. The material consultation requirements are contained in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 and the material works in the instant case concern the aforementioned lift refurbishment.

5. The Application was dated 10 February 2017 and was received by the Tribunal on 13 February 2017. A schedule to the application listed the tenants of 35 flats at Newlands Court in Cardiff as respondents (being the tenants of those flats numbered 1 to 36 but excluding number 13).

The Relevant Background

The substantive background

6. Newlands Court ("the Property") comprises 35 self-contained apartments arranged over four storeys in a traditional purpose built property believed to have been constructed in the early 1980s. Common areas within the Property include entrance halls, two staircases, landings and a single six person lift serving the entire building. Externally there are communal gardens and limited car parking areas.

7. The Property is let to those over the age of 55 years who have retired from full-time employment and all but one of the flats is let on a long leasehold basis.

8. We were supplied with a sample lease for the long leasehold flats within the Property. Clause 1 of that lease indicates that the flats are demised for a term of 60 years subject to the tenants *"paying during the said term monthly in advance a service charge (hereinafter referred to as "the service charge") payable to the Landlord which charge shall be payable in respect of the matters referred to in the First Schedule hereto"*. By Clause 4.1 the tenants covenant to pay the service charge in accordance with the provisions of the First Schedule to the lease. Paragraph 2 of that Schedule provides that the service charge shall make provision for various heads of expenditure in respect of the Property which includes, at paragraph 2(d): *"the cost of maintaining and repairing (and of making provision for the replacement of) the lifts and other Landlord plant and equipment".*

9. By Clause 2.1 of the lease(s), the demise to the tenants includes the right to use common parts, including any lift, and by Clause 5(e) the landlord covenants to "*to keep in good and substantial repair and to repair redecorate renew amend and clean when and as necessary and appropriate…the passenger lifts…and all apparatus equipment plant and machinery serving the passenger lifts".*

10. Of particular note are the additional provisions in the lease for the creation of a sinking fund. Clause 7 contains detailed terms governing the determination of a tenant's interest and the "repayment sum" payable to an outgoing tenant. By Clause 7.4(e) of the lease the landlord is entitled to retain, from the "repayment sum", 1% of the purchase price originally paid by the tenant multiplied by the number of years for which the tenant has occupied their flat. Significantly, the resulting fund is intended to be a *"reasonable sum to provide a sinking fund for depreciation and without prejudice to the generality of the foregoing the costs or anticipated costs of renewal replacement or major overhaul of the lift (if any) and plant..."*.

11. The facts advanced in support of the Application are set out in a two page statement from the aforementioned Mr. Michael Halloran. In that statement Mr. Halloran explains that the lift at Newlands Court broke down on 3 February 2017. The work for which dispensation is sought was undertaken between 14 February 2017 and 24 February 2017.

12. The Applicant has a service and maintenance contract with Thyssenkrupp Elevator UK Limited (styled "TKE" in the statement) and that company sent an engineer out, a Mr. Christopher Payne, on the day of the breakdown. We were supplied with both a typed Callout Report and a manuscript Callout Report prepared by TKE and dated 3 February 2017. The latter document includes the entry: *"This lift is of an age where no spare parts are available. The lift is becoming more and more problematic. Parts on this lift are starting to fail & replacement parts cannot be sourced"*.

13. Mr. Halloran explains that the Applicant's manager at Newland Court advised, on 3 February 2017, that there were six residents who were reliant on the lift due to mobility problems and that further residents were likely to struggle without use of the lift. As a result of this, and the report from TKE, it was felt that refurbishment of the lift should be undertaken as soon as possible in order to limit the impact on the residents of the Property.

14. At the hearing Mr. Halloran amplified his evidence. He explained that the Applicant's Contracts Manager, Mr. Gareth Radcliffe, liaised with a Mr. James North of TKE but that Mr. Halloran was also involved and kept informed. During conversations with TKE, Mr. Halloran and Mr. Radcliffe were informed

that it was not possible to carry out a simple or patch repair to put the lift back in use. The advice from TKE was that a full lift refurbishment was necessary before the lift could be put back into service.

15. The residents at the Property were kept informed of issues with the lift by staff at the Property and during the course of a previously arranged meeting with residents on the day of the lift breakdown. It appears that that meeting took place before TKE's engineer attended at around 16.46 on 3 February 2017 but, when the terminal condition of the lift became apparent, a letter was sent to all of the residents on 6 February 2017. That letter includes an explanation that TKE had *"confirmed that they were unable to repair the lift due to the age of the control panel and parts becoming obsolete"*. It also goes on to explain that the lift was a high priority because a number of the residents relied on the lift and then continues:

> *"Normally the Association would allow a 30 day consultation for residents to make any written representations in relation to the proposals contained in this notice. However due to the circumstances we will be applying for dispensation from section 20 rules so we do not delay the works from being undertaken and getting the lift back into service.*
>
> *A description of the works to be provided by Thyssenkrupp with the costs has been included with this letter for your information. Please be advised that the cosmetic work to the lift does not include the internal and external painting of the lift doors.*
>
> *I estimate that the total amount of the expenditure likely to be incurred in connection with the proposed works as: £27,000 plus VAT for the lift works and £400 plus VAT in order to have the parts delivered within the proposed time frame.*
>
> *This gives a total cost of the works at £27,400 plus VAT (£32,880.00 exc [sic] VAT). The payment for these works will be undertaken from the schemes [sic] major repairs sinking fund.*
>
> *The proposed start date for the works is 14 February 2017. It can take up to two days for the installation and replacement of components from this date and one day to test and commission the lift ready for use. We have advised Thyssenkrupp of the inconvenience regarding the lift being out of action for residents so hope that this will be completed sooner. We will update residents as work progresses as to the envisaged completion date. Please note that the lift will be out of operation for the entire duration of these works…."*.

16. The letter then went on to provide a contact number for residents to raise concerns.

17. The TKE quotation for the lift refurbishment that accompanied that letter confirms the quotation of £27,000 excluding VAT and explains that: *"The hydraulic tank and control system need to be replaced to ensure long term reliability, the existing are obsolete and no longer supported by the manufacturer and parts are not available"*. That document also then includes a detailed specification for the lift refurbishment itemising the character of the proposed works. We noted that the lift refurbishment proposal was dated 24 November 2016 but Mr. Halloran explained, and we accept, that that date was incorrect and appears to be the legacy of amendments to a pro forma used by TKE. Mr. Halloran stated that the quotation was produced by TKE only after the lift broke down on 3 February 2017.

18. As already noted, the Application for dispensation under the Act was made by 13 February 2017 but the works were commenced on 14 February 2017 and the lift was recommissioned when the works were completed on 24 February 2017. It was not apparent from the papers filed for the hearing what the actual final cost of the works were but, at the hearing, Mr. Halloran confirmed that the actual cost mirrored the indication on the letter of 6 February 2017. Namely, £32,880 including VAT.

19. The statement of Mr. Halloran reiterates that the lift was vital for access to certain of the residents and adds that several of them were forced to move out of their flats and stay with family until the lift was rendered functional again.

20. A further point of note in Mr. Halloran's evidence was the assertion by him that there is a long-term agreement with TKE for the service and maintenance of the lifts in the Applicant's properties, including for "*any modernisation works to these lifts*". We were not provided with copies of that agreement but Mr. Halloran stated that TKE were engaged after a tender process and that TKE were appointed as contractors because they were found to offer the best service and value for the contract. At the hearing, however, the Tribunal explored this point further. Mr. Halloran explained that whilst there was a long term agreement with TKE for lift maintenance, had time permitted he would have engaged in a full consultation in accordance with Part 2 of Schedule 4 to the Regulations. It was, he said, his view that the contract with TKE did not preclude the possibility of the lift refurbishment work being awarded to an alternative contractor. In his opinion, the Applicant was not contractually bound to award TKE the work although, candidly, he indicated that it was preferable to use TKE for that work because they would be maintaining the lift

under their service contract. That contract had been awarded in 2013 and renewed for a further two year term as recently as 2016.

21. Mr. Halloran's statement also adds that following the letter of 6 February 2017, through until the date of his statement on 28 March 2017, there were no objections from residents in relation to the works. This included following a second residents' meeting which post-dated the completion of the lift works.

22. The final significant evidence to emerge during the hearing concerned payment for the lift works and the Applicant's approach to the burden of that expense. Mr. Halloran's evidence was that the sinking fund created under the terms of the leases had produced a fund which, at the end of 2016, stood at around £28,500. The Tribunal was told that the cost of the material lift works was met from that fund. The shortfall of some £4,380 odd was met by the Applicant. This means that there is presently a deficit in the sinking fund but the Applicant confirmed that it will not seek to recoup any of the cost (including that deficit) through the monthly service charge.

The procedural position

23. Following receipt of the Application this Tribunal wrote to the tenants, sending copies of the Application to each, and notifying them of their right to participate as respondents to the application. Several telephoned the Tribunal offices to indicate that they did not wish to participate. They were the tenants of flats 7 (Mr. and Mrs. Davies), 26 (Mrs. Redman) and 35 (Mr. Dorman). Apart from them, the only other resident to reply was Mrs. Madeline Fraser of flat 2. She wrote on 14 February 2017 (a letter which was received by the Tribunal on 16 February 2017). That letter was somewhat opaque in its terms but included the assertion that the lift works should be paid for "*out of moneys accrued from the 40 some flat charges*". We take this to be a reference to the sinking fund and, if so, that is in fact what has occurred.

24. The Procedural Chairman issued directions on 10 March 2017 which ultimately listed the present hearing. Those directions were sent to Mrs. Fraser on 13 March 2017. She replied in writing (received on 16 March 2017) denying sending any prior letter and indicating that she regarded the listing of a hearing as harassment. The Clerk to the Tribunal wrote explaining the position on 23 March 2017 and pointing out that Mrs. Fraser was under no obligation to attend the hearing if she did not wish to do so. She did not attend the final hearing.

The Law

25. The relevant primary legislation is to be found in sections 20 and 20ZA of the Act. Section 20ZA(1) to 20ZA(4) provides as follows:

    20ZA(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.
    (2) In section 20 and this section—
    "qualifying works" means works on a building or any other premises, and
    "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
    (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
    (a) if it is an agreement of a description prescribed by the regulations, or
    (b) in any circumstances so prescribed.
    (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

26. The significance of the consultation requirements rests in the effect of section 20. In particular, section 20(1) provides that, where the section applies to any qualifying works or long term agreement, the relevant contributions of tenants are limited in accordance with section 20, and the material accompanying regulations, unless the consultation requirements have either (a) been complied with in relation to the works or agreement, or (b) dispensed with in relation to the works or agreement by a Leasehold Valuation Tribunal.

27. The precise character of the consultation required is prescribed by the Service Charges (Consultation Requirements) (Wales) Regulations 2004 ("the Regulations"). For qualifying works, the precise requirements differ depending upon which Schedule to the Regulations is applicable. The consultation requirements for qualifying works under qualifying long term agreements are those found in Schedule 3 of the Regulations. The consultation requirements for qualifying works, other than works under a qualifying long term agreement, for which public notice is not required are those in Part 2 of Schedule 4. This necessarily begs the question of whether the works were carried out under a qualifying long term agreement.

28. On the basis of Mr. Halloran's written evidence, it had appeared possible that the less onerous consultation requirements in Schedule 3 might apply. However, in view of his evidence that he would have complied with the requirements of Schedule 4 of the Regulations had time permitted and in view of his additional evidence that there was no contractual obligation to award

the work to TKE, we are satisfied that the more demanding consultation requirements in Part 2 of Schedule 4 applied and were prescribed by Regulation 7(4) of the 2004 Regulations. Where the consultation requirements are more exacting this probably increases the risk that a tenant will be prejudiced in those requirements are ignored.

29. Part 2 of Schedule 4 is in the following terms:

Schedule 4 – Part 2

Notice of intention

1.—(1) The landlord shall give notice in writing of 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) a summary of any observations made in accordance with paragraph 3 and the landlord's 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 any tenant or recognised tenants' association, 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, the landlord 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 reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
(b) where observations are made to which (in accordance with paragraph 5) the landlord was required to have regard, summarise the observations and set out the landlord's 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.

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.

30. It is important to note that the "relevant period" in the Schedule is defined by Regulation 2 of the Regulations as a period of 30 days.

31. The leading case on the question of whether a Leasehold Valuation Tribunal should grant a section 20(1)(b) dispensation under section 20ZA of the Act is *Daejan Investments Ltd. v. Benson* [2013] 1 WLR 854. Broadly, the following guidance was provided by the Supreme Court, in so far as relevant to the present application (references to paragraph numbering in what follows are to the relevant passages contained in the opinion of Lord Neuberger):

   (I) The purpose of the consultation requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate and, as such, the issue on which the Tribunal 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 consultation requirements (paragraph 44).

   (II) The dispensing jurisdiction is not a punitive or exemplary exercise. The consultation requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above (paragraph 46).

(III) The importance of real prejudice to the tenants flowing from the landlord's breach of the consultation requirements is the main, indeed normally the sole, question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA(1) (paragraph 50).

(IV) The Tribunal has power to grant a dispensation on such terms as it thinks fit provided that any such terms are appropriate in their nature and their effect (paragraph 54).

(V) The legal burden of proof remains throughout on the landlord but the factual burden of identifying some relevant prejudice that the tenants would, or might, have suffered is on the tenants (paragraph 67).

(VI) Given that the landlord has failed to comply with the consultation requirements, the landlord can scarcely complain if the Tribunal views the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less (or, for instance, that some of the works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points.

(VII) If the tenants show that, because of the landlord's non-compliance with the consultation requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the Tribunal would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice (paragraph 67).

(VIII) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it (paragraph 68).

(IX) However, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the Tribunal, and they are likely to have their costs of consulting a surveyor and/or solicitor paid by the landlord (paragraph 69).

32. Central to the enquiry of this Tribunal is, accordingly, the question of the extent, if any, to which the tenants were prejudiced by the failure of the

landlord to comply with the applicable consultation requirements. The legal burden is on the Applicant but the respondent tenants should lead some credible evidence identifying some relevant prejudice that they have, or might have, suffered.

33. For completeness, we might add that the correct approach to dispensation applications was helpfully summarised by the Deputy President in the Upper Tribunal in *In the Matter of OM Property Management Limited* [2014] UKUT 9 (LC) and we have also had regard to the court's summary in that case at paragraph 11 *et seq.*

Discussion and Decision

34. Absent any evidence to the contrary, we accept the evidence of Mr. Halloran in his statement dated 28 March 2017. There is nothing in the documentation provided that offers any reason to suggest that his evidence is anything other than accurate save for the misdating of the lift refurbishment proposal. We accept that that proposal was probably prepared between 3 and 6 February 2017. Furthermore, we consider that when Mr. Halloran gave additional evidence to the Tribunal he did so in a dispassionate and balanced way. This was borne out by his acceptance that the Applicant could have awarded a contract for the lift works to a third party other than TKE. It was also reflected in his concession that he would have engaged fully with the requirements of Schedule 4 of the Regulations but for the pressing need to put the lift back into a serviceable condition. We accordingly accept in its entirety both his written and his oral evidence to the Tribunal.

35. It necessarily follows from that, and the documents exhibited to the statement and the Application, that we find as follows:

(I) When the lift broke down on 3 February 2017, the TKE engineer concluded that the age and character of the lift meant that it was not possible to carry out a simple repair. Replacement parts could not be sourced to allow a such a straightforward repair.

(II) The lift was rendered inoperable by the breakdown on 3 February 2017 and this was communicated to the Applicant by TKE between 3 and 6 February 2017; that came as no surprise given earlier warnings from TKE about the limited remaining lifespan of that lift.

(III) In order to repair the lift, and comply with the Applicant's covenanted obligation under Clause 5.1(e) of the lease, it was necessary to undertake repairs of the character detailed in TKE's proposals for the lift's refurbishment and for which they quoted £27,400 plus VAT.

(IV) The Applicant could not reasonably have delayed the works necessary to put the lift back in repair given (a) the character of the Property, (b) the residents' need to use a lift for access and egress and (c) the fact that those needs were so acute that certain of the flats' residents were forced to move out of the Property until the repair was completed.

36. On those facts, we are firmly of the view that it is reasonable to dispense with the consultation requirements in the Act and the Regulations.

37. In short, there is no evidence that the relevant tenants have suffered any prejudice by reason of any lack of consultation. There is nothing to indicate that the tenants will thereby pay for inappropriate works. Manifestly these were appropriate and essential works that were needed as a matter of urgency. Moreover, there is presently no evidence that the tenants are paying more than is appropriate for those works. On the contrary, the only evidence before us is the evidence of Mr. Halloran which was to the effect that TKE were awarded a contract for the service, maintenance and any modernisation of the Applicant's lifts after a tender process which indicated that that they offered the best service and value for that contract.

38. An application under section 20ZA is concerned with whether it is reasonable to dispense with the requirements for consultation. It is not always necessary, and often not appropriate, for a Tribunal to express a view about the reasonableness of the works or the cost of such *per se*. Rather, the question is whether it is reasonable to dispense with the consultation requirements. The difficulty for a landlord in a case such as this is that references to the "relevant period" in the Schedule to the regulations are to a period of 30 days. This means that the whole process of consultation can take months in circumstances of acute urgency where this is not practical and not in the tenants' own interests.

39. Whilst not wishing to stray beyond the remit of the enquiry for this Tribunal it is, however, right to observe that there no evidence before this Tribunal that the cost of the works was unreasonable and there is no evidence that the tenants suffered any, or any real, prejudice by reason of the want of consultation. On the contrary, we are satisfied that the prejudice resulting from the delay inherent in the consultation requirements would have been far graver for many of the residents of Newlands Court.

40. In addition, Mr. Halloran's evidence was that the cost of the lift refurbishment has been borne by the sinking fund created under Clause 7.4(e) of the lease and that, to the extent that the fund has been exhausted by the cost of those works, any outstanding balance will not be passed on to the tenants as part of

their monthly service charge obligations. Rather, it will create an accounting deficit in the sinking fund. In practical terms, this means that the tenants will accordingly not be burdened with a higher monthly service charge. This greatly ameliorates the risk of any prejudice at all. The reality is that they are unlikely to pay anything more by way of service charges because the cost has been absorbed by the freestanding sinking fund and the Applicant.

41. In the circumstances, we accordingly grant the Applicant's application in the terms summarised at the beginning of this decision.

ORDER

In accordance with section 20ZA of the Landlord and Tenant Act 1985 (as amended) the Leasehold Valuation Tribunal dispenses with the consultation requirements for the purposes of section 20(1)(b) of that Act in relation to the material qualifying works undertaken to the lift at Newlands Court Station Road, Llanishen, Cardiff, CF14 5HU in or around February 2017.

DATED this 10th day of May 2017

CHAIRMAN