



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

Case Reference : **MAN/OOBM/LDC/2022/0028**

Property : **The Cottons, Factory Street,
Ramsbottom, Bury BL0 9GH**

Applicant : **Gladman Retirement Living Limited**
Representative : **Adlington Management Services**

Respondents : **Various Residential Long Leaseholders**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – Section 20ZA**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member P. Mountain**

Date of Determination : **18th October 2022**

Date of Decision : **20th October 2022**

DECISION

Decision

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 to enable the Applicant to enter into a qualifying agreement lasting longer than their current arrangements of 12 months is granted. This is in respect of their current energy contract that expires in October 2022 and relates to The Cottons, Factory Street, Ramsbottom, Bury BLO 9GH

Reasons

Background

1. This is an application made by Gladman Retirement Living Limited (“the Applicant”) for the dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) to enable it to enter into a long-term agreement lasting longer than the current energy contract of 12 months for The Cottons, Factory Street, Ramsbottom, Bury (“the Property”).
2. The Applicant has stated the current energy contract expires in October 2022 and their energy broker has confirmed, as at the date of the application, the cost will increase from 20p kw/hr to 89p per kw/hr if renewed on a 12 month basis. Such an increase will place significant financial pressure upon the Respondents and it needs flexibility to negotiate longer term agreements in order to mitigate the increased cost.
3. The Respondents to the application are the various long leaseholders of the Property (“the Respondents”).
4. The application is dated 23rd March 2022 and in respect of which directions were issued on 8th July 2022 providing for the filing of any objections by the Respondents and for the application to be determined without a hearing.
5. The Applicant confirmed no objections had been received to the application, nor were any representations received by the Tribunal.
6. The Tribunal considered the application on the Applicant’s written submissions on 18th October 2022.

The Law

7. Section 20 of the Act provides:

(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 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 the 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”

8. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

9. Section 20ZA of the Act provides:

(1) Where an application is made to a tribunal for a determination to dispense with all or any 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 section (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

10. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements.

Submissions

11. The Applicant is the landlord of the Property, a retirement village comprising of 57 apartments. It is described as providing extensive communal facilities, including a table service restaurant, lounges, coffee lounge, activity studio, therapy suite, hairdressing salon, lifts, mobility scooter store with charging facilities, car park and extensive grounds. The Property is entirely powered by electricity and the cost is funded through the service charge.
12. The Applicant confirmed their existing energy contract expires in October 2022. In March 2022 their energy broker provided a quote, on the same terms, showing the cost of electricity would, at that time, rise from 20p kw/hr to 89p per kw/hr. This increase will place financial pressure on the Respondents. Accordingly, the Applicant wishes to negotiate longer term agreements to mitigate the increased costs.
13. The Applicant seeks dispensation from all the Consultation Requirements necessary to enter into a long term agreement exceeding 12 months to enable it to secure the best possible contract in a volatile market.
14. The Applicant also confirmed it held an annual service charge budget meeting in March 2022 where the situation was discussed with the Respondents and where support was given for the application to the Tribunal. The Applicant confirmed no objection to the application had been received.

Determination

15. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where “*if satisfied that it is reasonable to dispense with the requirements*”.
16. The Tribunal, having considered the submissions made by the Applicant, is satisfied there is good reason to dispense with the Consultation Requirements. The Applicant wishes to mitigate the cost to the Respondents that will arise from any increase in the price of electricity and, in the current economic climate, such increase is likely to be considerable.

17. The Tribunal has taken into account the Applicant has engaged with the Respondents, explained what steps it proposed to take and no objections have been received.
18. The granting of dispensation does not affect the Respondents' rights to the challenge the reasonableness or the payability of the service charges under a separate application pursuant to section 27A of the Act once the proposed costs have been incurred.

J.E. Oliver
Tribunal Judge
20 October 2022

Rights of appeal

1. 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.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. 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.
4. If the application is not made within the 28 day time limit, such applications 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.
5. 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 rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Annex A – List of Respondents

Respondent	Apartment Number
Mrs Whalley	Apartment 01
Gordon Barnes	Apartment 02
Mr & Mrs Braithwaite	Apartment 03
Mrs Howarth	Apartment 04
Mrs Ball	Apartment 05
Gladman Retirement Living (One) Limited	Apartment 06
Gladman Retirement Living (One) Limited	Apartment 07
Mr & Mrs Bell	Apartment 08
Mr Robinson	Apartment 09
Mr & Mrs Reynolds	Apartment 10
Gladman Retirement Living (One) Limited	Apartment 11
Mr & Mrs Smith	Apartment 12
Gladman Retirement Living (One) Limited	Apartment 14
Gladman Retirement Living (One) Limited	Apartment 15
Gladman Retirement Living (One) Limited	Apartment 16
Mr Harlow	Apartment 17
Mrs Gregson	Apartment 18
Mr & Mrs Pickford	Apartment 19
Mrs Hargreaves	Apartment 20
Gladman Retirement Living (One) Limited	Apartment 21
Mr Smith	Apartment 22
Mrs Barbara Mooney	Apartment 23
Mrs Ashton	Apartment 24
Mrs Mary Vale	Apartment 25
Mr Mervin	Apartment 26
The Estate Of Mr Chesters	Apartment 27
Mrs Swan	Apartment 28
Mr Graham	Apartment 29
Mrs Wild	Apartment 30
Mr Searjeant	Apartment 31
Mr Skinner	Apartment 32
Miss Grindrod	Apartment 33
Mrs Cunnington	Apartment 34
Mrs Cairns	Apartment 35
Gladman Retirement Living (One) Limited	Apartment 36
Mr Baylis	Apartment 37
Mr Flint	Apartment 38
The Estate of Mrs Mannion	Apartment 39
Mr Brian Davies	Apartment 40
Mr & Mrs Ingham	Apartment 41
Mrs Slater	Apartment 42
Mr & Mrs Wild	Apartment 43
Mrs Mellor	Apartment 44
Mrs Newcombe	Apartment 45
Mrs Ashworth	Apartment 46

Mrs Braithwaite	Apartment 47
Mr & Mrs Webb	Apartment 48
Mrs Elizabeth Holiday	Apartment 49
Gladman Retirement Living (One) Limited	Apartment 50
Mrs Littler	Apartment 51
Miss Pollard	Apartment 52
Mrs Archer	Apartment 53
Mr Gofton	Apartment 54
Mr Ashworth	Apartment 55
Mrs Shirley Colman	Apartment 56
Gladman Retirement Living (One) Limited	Apartment 57
Mr Stewart	Apartment 58