



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

**Case Reference** : **BIR/00CN/LDC/2021/0018**

**HMCTS** : **V: CLOUD VIDEO PLATFORM (CVP)**

**Property** : **Heritage Court, 15 Warstone Lane,  
Birmingham, B18 6HU**

**Applicant** : **Heritage Court (Warstone) RTM Limited**

**Representative** : **Counsel – Miss N Foster of 42 Bedford  
Row Chambers, instructed by JB Leitch  
Solicitors**

**Respondents** : **The residential long leaseholders of  
Heritage Court**

**Type of Application** : **Application under section 20ZA of the  
Landlord and Tenant Act 1985 to dispense  
with consultation requirements in respect  
of qualifying works**

**Tribunal Members** : **Judge M K Gandham  
Mr D Satchwell FRICS**

**Date of Hearing  
Hearing** : **25 October 2021**

**Date of Decision** : **3 December 2021**

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**DECISION**

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## **Covid-19 Pandemic: Remote Video Hearing**

This determination included a remote video hearing which had been consented to by the parties. The form of remote hearing was Video (V: CLOUD VIDEO PLATFORM). A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing/on paper. The documents referred to were contained within the parties' bundles, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the COVID-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private. The Tribunal had directed that the proceedings were to be conducted wholly as video proceedings; it was not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who were not parties entitled to participate in the hearing; a media representative was not able to access the proceedings remotely while they were taking place; and such a direction was necessary to secure the proper administration of justice.

## **Reasons for Decision**

### **Introduction**

1. On 5 August 2021, the Tribunal received an application from Heritage Court (Warstone) RTM Limited ('the Applicant') under Section 20ZA of the Landlord and Tenant Act 1985 ('the Act'), for dispensation from the consultation requirements contained in Section 20 of the Act for works to be carried out at Heritage Court, 15 Warstone Lane, Birmingham, B18 6HU ('the Property'). The application related to maintenance and repair issues caused by water ingress which affected numerous apartments at the Property. The application stated that works were commenced prior to consultation as the works were urgent and that there had been a risk of further damage or disrepair should they have been delayed.
2. A Directions Order was issued on 11 August 2021 requiring the Applicant to place in the hall/communal notice board, and to forward to each of the residential long leaseholders ('the Respondents') and the landlord: a copy of the application and any accompanying documents, a copy of the Directions Order (which included a form for the Respondents to indicate whether they supported the application) and a copy of the Tribunal's covering letter. The Directions Order also confirmed that the Tribunal did not consider that an inspection of the Property was required.
3. The Tribunal received 23 completed forms from various leaseholders, 18 of which supported the application and 5 of which did not. Ms Lempart (the leaseholder of Apartment 91, Heritage Court), in her email enclosing her form,

stated that she objected to the application as the documents were vague and that the Applicant's managing agent would only talk to leaseholders on an individual basis, which she stated was one example of a lack of transparency by them and the RTM directors.

4. Following a request from Miss Mountford and Mr Patel (the leaseholders of Apartment 14, Heritage Court), the Tribunal extended the time in the Directions Order for receipt of any leaseholders' cases to 15 October 2021. As no bundle or statement of reasons had been received by that date from any of the objecting leaseholders the deadline was, again, extended to 22 October 2021. The only leaseholders to forward any written representations or to confirm that they wished to participate in the hearing were Miss Mountford and Mr Patel.
5. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements, under section 20ZA of the Act. **This Application does not concern the issue of whether any service charge costs are reasonable or payable and the Respondents will continue to enjoy the protection of section 27A of the Act.**

## The Law

6. Section 18 of the Act defines what is meant by the term 'service charge' and defines the expression for 'relevant costs'. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred.

Section 20 details consultation requirements and section 20(1) provides:

*Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... 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) the appropriate tribunal.*

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works unless certain consultation requirements have been either complied with or dispensed with by 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, amongst other things, require the landlord to serve on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants' observations. There is also a duty on the landlord to seek estimates from any contractor nominated by or on behalf of tenants. The requirements also detail the procedure for the preparation and delivery of the landlord's proposals.

Section 20ZA of the Act provides:

*(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...*

Therefore, section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements “*if satisfied that it is reasonable*” to do so.

### **The Leases**

7. The leases of the residential apartments in Heritage Court contain a provision in clause 5.5 that the lessor is responsible for providing the services, which, in Part II of the Second Schedule include:

*“1 The maintenance repair provision service inspection and where necessary renewal of the Development and each and every part thereof and the keeping of the same in a good state of repair and condition”*

### **The Hearing**

8. An oral hearing was held via CVP on 25 October 2021. The Applicant was represented by Miss Foster (Counsel), accompanied by Miss Edwards and Ms Green (an associate solicitor and trainee solicitor, respectively, both from JB Leitch Solicitors) and Mr Ahmed (a Senior Property Manager with Metropolitan PM Limited ‘MetroPM’, the Applicant’s managing agent). Mr Patel attended on behalf of himself and Miss Mountford. No other Respondents attended.

### ***Applicant’s Submissions***

9. The Applicant, in its Statement of Case, confirmed that it was the ‘right to manage company’ for Heritage Court, which was a mixed use building comprising of 4 commercial units, on the ground floor, and 116 residential leasehold apartments, located between the ground and fifth floors. The Applicant confirmed that the freehold was held by Ishguard Limited and that all of the residential leases were in similar terms to the copy lease (of Apartment 108, Heritage Court) provided to the Tribunal.
10. Mr Ahmed confirmed that MetroPM took over the management of the Property, from Scanlans Property Management LLP, in December 2020 and that it was clear, from a review of the handover documentation and meetings with contractors and leaseholders in January 2021, that major works were urgently required due to water ingress and that some of the apartments were uninhabitable. He stated that, due to a number of historical claims, the buildings insurance for the Property had an excess of £50,000 for water claims

and did not cover claims for water ingress. As such, he stated that any works would need to be charged to the leaseholders under the service charge.

11. Mr Ahmed confirmed that the Applicant had appointed Genesis Maintenance Ltd ('Genesis') to undertake a scheme of works to remedy the problems prior to MetroPM's instruction. He stated that, due to the nature of the works, the Applicant had instructed Genesis to begin the works at the earliest opportunity but that these works were briefly stopped in October 2020. After MetroPM's appointment, Mr Ahmed stated that, although the information available from the previous managing agents was limited, they noted that the costs for the completion of the works that Genesis had commenced would have exceeded the section 20 consultation threshold. As they considered that the works were urgent and had already been started, they believed that an application for dispensation should be made to the Tribunal for the remaining works.
12. Mr Ahmed confirmed that they instructed Hamilton Darcey Chartered Surveyors ('Hamilton Darcey') to produce a schedule of works ('the Schedule of Works') based on the outstanding works which Genesis had been appointed to urgently complete. The works contained within the Schedule of Works were referred to as the 'Phase 1 works'. Mr Ahmed stated that the Phase 1 works included urgent works, such as the sanitation of apartments, installing floor insulation, reinstating the apartments after works had been completed and checking the electrics and various works to balconies. Although other works to the Property, due to the damage, were also required, Mr Ahmed confirmed that these would be part of a second project, Phase 2, for which the Applicant expected to carry out formal consultation under section 20 of the Act.
13. He stated that Genesis had provided costings in relation to the Schedule of Works, which amounted to £72,144.02, which Hamilton Darcey stated were in line with the market. In addition, he stated that the Applicant had obtained a further quote from H2O, which amounted to £101,320.18. Mr Ahmed considered that instructing an alternative contractor to continue works already started by Genesis would have resulted in a higher cost to the leaseholders.
14. Mr Ahmed stated that it took time to make the application to the Tribunal due to the lack of information from the previous managing agents. He stated that solicitors were instructed in February/March 2021, after the Schedule of Works had been produced and quotes obtained. Mr Ahmed also stated that MetroPM were in regular communication with the leaseholders, holding residents' meetings, via Zoom conference calls, on 23 February 2021 and 7 May 2021, and giving them updates as to the works.
15. In relation to the Schedule of Works, Mr Ahmed stated that the resident of Apartment 1 had vacated the Property, at his own expense, some time ago as it was uninhabitable. He confirmed that the Schedule of Works did not detail either the works or the estimated costs to Apartment 112 or Apartment 86, as they had been unable to gain access to them. He also clarified that the Schedule of Works did not include the works which had already been completed by Genesis, as those had been completed by October 2020 and the costs of those works had already been included in the 2020 year-end accounts.

16. Miss Edwards confirmed that JB Leitch Solicitors had initially been contacted by the Applicant in March 2021 and were formally instructed in late April 2021. She confirmed that the application to the Tribunal was made as soon as they had received all the necessary documentation.
17. Miss Foster stated, on behalf of the Applicant, that the Tribunal has a power to dispense with the consultation requirements if it considers it reasonable to do so. She submitted that the leading authority in such matters was the decision of the Supreme Court in *Daejan Investments Limited v Benson et al* [2013] UKSC 14 (*Daejan*), which essentially set out the test as to whether dispensation should be granted. She submitted that in *Daejan*, the Supreme Court stated that the Tribunal should focus on any relevant prejudice caused to the Respondents by the failure to comply with the consultation requirements set out in section 20 of the Act and that the burden was on the Respondents to show what prejudice had been caused.
18. She stated that the works were urgent and pointed to the fact that only 5 of the 116 leaseholders had raised any objections and that Mr Patel and Miss Mountford were the only ones who had forwarded any formal representations and participated in the hearing.
19. She stated that Mr Patel and Miss Mountford's objections generally related to queries regarding the management of the Property and lack of correspondence. They also referred to works relating to Phase 2 and fire safety and cladding, which, she stated, were completely separate to the application before the Tribunal and for which the Applicant had already stated consultation would be carried out.
20. She further stated that their objections in relation to whether works were required and the reasonableness of the costs of those works, were section 27A objections and did not show any prejudice in relation to the lack of consultation. In any event, she confirmed that the instruction of Hamilton Darcey to provide the Schedule of Works and the quote from H2O, showed that the proposed works were not only required, but that the costs quoted by Genesis were also reasonable and proportionate.
21. Miss Foster submitted that the lack of any major objection and the urgency of the works made the matter appropriate for dispensation, although she confirmed that the Applicant was willing to accept a condition that six-weekly updates as to the works could be provided to the Respondents, should the Tribunal consider this appropriate

### ***Respondents' Submissions***

22. At the hearing, Mr Patel, on behalf of himself and Miss Mountford, stated that, although they had no objections to the works being required – as long as the Schedule of Works was correct and that all previous works had been paid for – they were unhappy with the way in which the works had been approached and that, due to having already had three service charge increases, there was a lack of trust between the parties.

23. Mr Patel stated that there had been no evidence as to what works had already been carried out and he queried whether some of the works were duplicated within the Schedule of Works drawn up by Hamilton Darcey. In addition, although he confirmed that MetroPM had been an improvement on the previous managing agent, he stated that they were worried that, as with the previous managing agent, there would be a lack of consultation and information provided to the leaseholder and, as such, submitted that formal consultation was required.
24. In their written submission, Mr Patel and Miss Mountford stated that they had no confidence that the works would be completed within budget and that they lacked confidence in the suppliers. In addition, they stated that, where any works were required due to the fault of the contractor, the cost of those works should be recovered from the contractor or the contractor should make good the damage caused by them. (Although they did not clarify which apartment this related to, they referred to works to a balcony which were included within the Schedule of Works but which had not been detailed in the original scope of works with Genesis).
25. Mr Patel and Miss Mountford also referred to works not having been prioritised correctly and a lack of clarity as to the works being pursued. They queried an entry regarding scaffold removal in the Schedule of Works, as they stated that there was no scaffolding in place at the Property. They also stated that, although works to Apartments 86 and 112 were detailed within the Schedule of Works, due to the Applicant not having been able to gain access to those apartments, those works should be moved into Phase 2 until the works could be confirmed and costed accurately. They also queried whether some of the works detailed in Phase 2 should be moved to Phase 1.
26. They stated that they were worried about spiralling costs and having to “*foot the bill*” for building defects, including cladding costs which were yet to be clarified by the Applicant. As such, they submitted that, in order to give the leaseholders confidence that the works would be managed correctly and efficiently, they proposed that: leaseholders should be consulted if the costs of the works were to exceed £72,144.02; that if works were due to building defects, the builder should be pursued; that the leaseholders should be kept fully informed of the progress of any works; that the leaseholders should be consulted on the use of any suppliers and that the previous managing agent should be pursued for damages.

### **The Tribunal’s Deliberations and Decision**

27. The Tribunal considered all of the written and oral evidence submitted and summarised above.
28. The Tribunal must decide whether it is reasonable for the works to proceed without the Applicant first complying with the section 20 consultation requirements, as is required under the Act.

29. Section 20ZA confirms that a tribunal may make a determination to dispense with all or any of the consultation requirements, if it is satisfied that it is “reasonable” to dispense with the same. Miss Foster is correct in that, the leading authority for the way in which the Tribunal should approach this question was considered by the Supreme Court in *Daejan*, which determined (amongst other things) that the correct approach was to consider the extent to which the tenants might be prejudiced by a lack of consultation. In considering that issue, the legal burden of proof rests with an applicant, but the factual burden of identifying some relevant prejudice rests with a respondent. Relevant prejudice refers to a disadvantage that a respondent would not have suffered had the consultation requirements been fully complied with.
30. In this matter, the Applicant confirmed that major works to the Property were urgently required due to water ingress and that, as Genesis had already commenced some of the works, granting dispensation for the remainder of the works, as detailed in the Schedule of Works, was reasonable. In addition, they submitted that the costs quoted by Genesis were in line with market prices and much lower than an alternative quote that they had obtained from H2O.
31. The Tribunal noted that, although there had been 5 objections to the application to dispense, only Mr Patel and Miss Mountford had forwarded any written representations for the Tribunal to consider out of the 116 residential leaseholders. The Tribunal also noted that, other than the works to Apartment 86 and Apartment 112, Mr Patel and Miss Mountford did not submit that works were not urgent. The majority of their concerns related to the increased service charge, the lack of information provided to leaseholders when the works were originally commenced and a breakdown in trust between the leaseholders, the Applicant and the managing agents. Although the Tribunal is sympathetic to those concerns, it does not consider that they amount to relevant prejudice which would be caused by a result of the failure by the landlord to comply with the consultation requirements.
32. The Tribunal is satisfied that the works detailed in the Schedule of Works are urgently required, other than any works relating to Apartment 86 and Apartment 112, and that, as the works have already been commenced by Genesis, dispensation should be granted for the works to be completed by them. In relation to Apartment 86 and Apartment 112, the Tribunal concurs with Mr Patel and Miss Mountford that, without having access those apartments, the Applicant cannot state with any certainty that any works required to them are urgently required.
33. With regard to Mr Patel and Miss Mountford’s concerns regarding the potential costs exceeding those quoted by Genesis and whether the supplier would carry out the works to a reasonable standard, the reasonableness of the costs and standard of the works proposed is not in issue before this Tribunal. If there is any dispute about those matters, then they would have to form the basis of a separate application under section 27A of the Act after the works had been completed and accounted for.



34. In relation to any duplication of works, the Tribunal noted that Mr Patel and Miss Mountford did not provide any evidence that this was the case and, if it was, the Tribunal considered that the leaseholders of the apartments concerned would have raised objections to this. In addition, with regard to the works to the balcony referred to by Mr Patel and Miss Mountford in their written submission, the Tribunal noted that some of the works to the balconies detailed in the quote by Genesis appeared to be at no cost to the leaseholders and, again, the Tribunal considered that if costs for repairing faulty workmanship had been included, this would have been objected to by the relevant leaseholders. In any event, the Tribunal considered that both of these matters could also be dealt with by way of an application under section 27A of the Act if required.
35. In relation to whether any of the works in Phase 2 should be moved to Phase 1, the Tribunal was only concerned with whether dispensation should be granted for any of the works detailed in Phase 1, so did not consider this relevant.
36. Finally, with regard to the proposals put forward by Mr Patel and Miss Mountford, the Tribunal did not consider it appropriate that dispensation should be subject to any conditions relating to the costs or to the supplier instructed (as previously stated the leaseholders still had the benefit of making an application under section 27A of the Act if required), nor any negotiations regarding action relating to the builder or previous agent. In relation to keeping the leaseholders informed on the progress of the works, the Tribunal noted that the Applicant was willing to provide six-weekly updates and the Tribunal considered that such a condition was reasonable.
37. Having considered all of the evidence submitted, the Tribunal finds that the works detailed in the Schedule of Works, other than any works to Apartment 86 and Apartment 112, are required as a matter of urgency and that the issues raised by the Respondents have not identified that they had suffered or will suffer any relevant prejudice as a result of the lack of consultation.
38. Accordingly, the Tribunal is satisfied and determines that, other than any works to Apartment 86 and Apartment 112, it is reasonable to dispense with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in relation to the remaining works detailed in the Schedule of Works, subject to the Applicant (or its managing agent) providing six-weekly updates to the Respondents as to the progress of such works.

## **Appeal**

39. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham