



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

Case Reference : **CAM/00MG/LDC/2021/0008**

**HMCTS code
(paper, video, audio)** : **P:PAPERREMOTE**

Property : **1-11 Addenbrookes, Newport
Pagnell, MK16 9FE**

Applicant : **Spectrum (Newport Pagnell)
Management Company Ltd**

Respondents : **All leaseholders named in the
application**

Type of application : **For dispensation from consultation
requirements - Section 20ZA of the
Landlord and Tenant Act 1985**

Tribunal members : **Mary Hardman FRICS IRRV(Hons)**

Date of decision : **6 July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in an electronic bundle from the Applicant and further documents setting out the quotes. I have noted the contents and my decision is below.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of respect of qualifying works to replace the two boilers at the property.

Reasons for the tribunal's decision

The application

1. This is a retrospective application to dispense with the statutory consultation requirements in respect of works to replace two faulty boilers at the development
2. It says that both boilers in the plant room had developed issues. One had stopped working completely and the other was not working at maximum capacity. This meant that the heating system in some of the apartments was not functioning.
3. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
4. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to retrospectively dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
5. **In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.**
6. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable or by whom they are payable.**

The Property and parties

7. The Property is a purpose-built block of 6 flats, which is part of a larger development built around 2008.
8. The application is made by Spectrum (Newport Pagnell) Management Company Limited on behalf of the landlord, RMB 102 Limited. The

application was made against the leaseholders of the flats (the “**Respondents**”)

Procedural history

9. The Applicant said that the works were urgent, as explained below.
10. Case management directions were given on 2 June 2021 and included a reply form for any leaseholder who objected to the application to complete and return to the tribunal and to the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 21 June 2021.
11. The directions further provided that this matter would be determined on or after 5 July 2021 based on the documents, without a hearing, unless any party requested an oral hearing.
12. No leaseholder has responded, and no party has requested an oral hearing.
13. On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant’s case

14. Documentation provided by the Applicant states that both boilers in the plant room had developed issues. One had stopped working completely and the other was not working at maximum capacity. This meant that the heating systems in some of the apartments were not functioning.
15. Following investigations, it was recommended that the boilers were not repaired as they were likely to fail again, and money would have been spent to repair a system which was technically beyond economic repair. The recommendation was to replace both boilers.
16. Two quotes had been obtained and they proceeded with the lower quote of £5486 plus vat.
17. All leaseholders were aware of the works that were required, and these were completed due to risk posed by lack of heating. Vulnerable occupiers had already had to be provided with temporary heaters.

The Respondents’ position

18. As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply

form attached to the directions and send it to the tribunal and the Applicant.

19. The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed.

The tribunal's decision

20. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
21. This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
22. Accordingly, in the circumstances set out in this decision, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the works.
23. For the purposes of this application, the tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the replacement of the two boilers.
24. **This is not an application for the tribunal to approve the reasonableness of the works or the reasonableness, apportionment or payability of the service charge demand. I make no finding in that regard and the leaseholders will continue to enjoy the protection of section 27A of the Act.**
25. There was no application to the tribunal for an order under section 20C of the 1985 Act.
26. The Applicant shall be responsible for serving a copy of this decision on all leaseholders.

Mary Hardman FRICS IRRV(Hons)
6 July 2021

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).