



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

**Case reference** : **LON/00BK/LDC/2021/0231**

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

**Property** : **Flats 1-49 Burnham Court, Moscow Road, London W2 4SW**

**Applicant** : **Burnham Court Limited**

**Representative** : **Kinleigh Folkard & Hayward**

**Respondents** : **The leaseholders of Burnham Court**

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

**Tribunal member** : **Judge D Brandler  
Stephen Mason FRICS**

**Date and venue of hearing** : **25<sup>th</sup> October 2021  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **25<sup>th</sup> October 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 we were referred to are in an electronic bundle prepared by the applicant containing 84 pages. References in this decision to page numbers are in square brackets. The order made is described at the end of these reasons.

## **Decision**

1. The Tribunal grants the applicant dispensation from the statutory consultation requirements in respect of works required at Flats 1-49 Burnham Court, Moscow Road, London W2 4SW ("The building") to install new gas fired boiler plant.

## **Background to the Application**

2. The Tribunal did not inspect the building as it considered the documentation and information before it in the appeal bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
3. This has been a paper hearing which has not been objected to by the parties. The Tribunal had before it an electronic bundle prepared by the applicant in accordance with the Tribunal's directions issued on 28/09/2021 [37].
4. The applicant landlord seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in respect of the requirement to install new gas fired boiler plant in the building because the existing oil boiler is beyond repair.
5. The application is said to be urgent because although a temporary system has been put in place, the building does not have a reliable hot water provision. Although the tenants are not totally without hot water, at peak demand times the top floor flats in particular have inadequate hot water [7].
6. The oil-fired boiler suffered water damage as a result of the Fire Brigade incorrectly assessing that there was a fire in the boiler because there was smoke coming out of the chimney. The Fire Brigade poured water down the chimney and damaged the boiler beyond repair [9].

7. The building is a purpose-built block constructed in 1907 containing 51 flats. The resident porter occupies one flat.
8. The leaseholders have been informed about the requirement for works, and on 03/09/2021 were sent a stage one section 20 notice [9, 77-79]
9. Dispensation is sought so that the applicant landlord can proceed with the installation of the replacement boilers as quickly as possible prior to the winter months. Delay would make the situation worse for the tenants.
10. Since the directions were issued, no objections have been received by the Tribunal.
11. Correct compliance with service as directed by the Tribunal was confirmed by the applicant in their email dated 04/10/2021.

### **The leaseholders' case**

12. No objections have been received from any leaseholder.

### **Reasons for Decision**

13. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.  
**This application does not concern the issue of whether or not service charges will be reasonable or payable.**
14. Having read the evidence and submissions from the applicant and noted that there have been no objections to this application, the Tribunal determines the dispensation issues as follows.
15. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
16. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
17. 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.

18. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

19. The Tribunal is of the view that, taking into account that there have been no objections, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the works to install new gas fired boiler plant, as set out in the application.

20. There is documentary evidence from Direct Flame Limited describing the damage caused by the Fire Brigade and their advice to replace the boiler burner and flue or "*completely stripping sectional boiler, after this work as been carried out remount burner to see if this burner is still operational*" (sic) [45]. Also available to the Tribunal was the 'scope of works for new gas fired boiler plant' [52].

21. As stated above, the only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**

22. The Tribunal grants the applicant dispensation from the statutory consultation requirements in respect of works required at Flats 1-49 Burnham Court, Moscow Road, London W2 4SW ("The building") to install new gas fired boiler plant.
23. The Tribunal makes the following condition of such dispensation
24. The applicant shall be responsible for formally serving a copy of the Tribunal's decision on all leaseholders in the flats. Furthermore, the applicant shall place a copy of the tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the buildings. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights.

**Judge D Brandler**

**25<sup>th</sup> October 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.