



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

Case Reference	:	LON/00AN/LDC/2022/0229 P: PAPERREMOTE
Property	:	Barons Keep, Gliddon Road, London W14 9AT
Applicant	:	Barons Keep Limited
Representative	:	Esskay Management Services (Managing Agents)
Respondents	:	The leaseholders listed in the schedule to the application
Representative	:	Unrepresented
Type of Application	:	Section 20ZA Landlord and Tenant Act 1985 Dispensation with consultation requirements
Tribunal member(s)	:	Judge Donegan
Date of Paper Determination	:	28 February 2023
Date of Decision	:	28 February 2023

DECISION

This has been a remote determination 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 all issues could be determined on paper. The documents that I was referred to are in the applicants' bundle of 148 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') for remedial repairs and the renewal of the communal heating and hot water system at Barons Keep, Gliddon Road, London W14 9AT ('the Property').**
- (b) No terms are imposed on the grant of dispensation.**
- (c) The applicant shall send a copy of this decision to each of the respondents, either by email, hand delivery or first-class post. It shall also display a copy in a prominent place in the common parts of the Property. It must send an email to the Tribunal by 14 March 2023, confirming the date(s) when this was done.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application is dated 23 November 2022 and directions were issued on 08 December 2022. The case was allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 28 February 2023.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property is a purpose-built block containing 122 flats. The applicant is the freeholder. The respondents are the leaseholders of the 122 flats and all but four are members of the applicant company. The Property is managed by Esskay Management Services ('EMS').
5. The Property has a communal heating and hot water system ('the System'). This was in poor condition and EMS issued a s.20 Notice of Intention to all leaseholders on 02 February 2022, proposing remedial repairs and renewal.
6. EMS instructed engineers, Mendick Waring Limited ('MWL') who produced a specification dated April 2022. MWL then sought tenders from various contractors. Only one contractor, Maracom Limited, produced a tender (for £352,507 plus VAT). MWL reported to the

applicant company in a letter dated 11 November 2022, explaining the difficulties they had experienced in obtaining tenders. The directors decided to proceed with the works, given the time of year and onset of winter. EMS notified the leaseholders of this in a letter dated 15 November 2022 and explained they would submit a Tribunal application for dispensation.

7. The applicant seeks dispensation from the statutory consultation requirements for remedial repairs and the renewal of the communal heating and hot water system. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The grounds of the application

8. The grounds are contained in the Tribunal application. In brief, the applicant contends the works were urgent to ensure adequate heating and hot water services to the flats. They were unable to fully comply with s.20, as MWL were only able to obtain one tender.
9. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No objections have been received by the Tribunal.

The Tribunal's decision

10. The Tribunal grants retrospective dispensation for remedial repairs and the renewal of the communal heating and hot water system, as detailed in the MWL specification dated April 2022. No terms are imposed on the grant of dispensation.

Reasons for the tribunal's decision

11. The Tribunal accepts the works were urgent, given the onset of winter and the need to ensure adequate heating and hot water in all flats. The applicant tried to comply with s.20 but was unable to obtain more than one tender. The MWL letter dated 11 November 2022 reveals they originally sought tenders from six different contractors and subsequently approached other contractors but were only able to obtain the one tender from Maracom Limited.
12. The applicant acted reasonably in serving the Notice of Intention, obtaining the MWL specification and seeking tenders for the works. It was also reasonable to proceed with the works based on one tender, given the difficulties experienced by MWL. There is no guarantee that

additional tenders could have been obtained. Seeking these and, if successful, then serving a Statement of Estimates would have delayed the works by several months.

13. There has been partial consultation in the form of the Notice of Intention and EMS' letter dated 15 November 2022. None of the respondents have contested this application, identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.
14. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the full s.20 consultation requirements.
15. This decision does not address the cost of the works or whether the respondents are liable to contribute to this cost via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act.

Name: Tribunal Judge Donegan **Date:** 28 February 2023

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 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 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.
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 grounds 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (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) the appropriate 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 an 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.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which –
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.