



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

Case Reference : **CAM/26UJ/LDC/2020/0017**

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

Property : **The Cedars, Finch Green,
Chorleywood, Herts WD3 5GL**

Applicant : **Cedars Village Management
Limited**

**Applicant's
representative** : **Colin Foulger**

Respondents : **1. RV Property Holdings Limited
2. The leaseholders of the Property
(154 units)**

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 : **26 August 2020**

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. 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 paginated bundle produced by the Applicant together with the copy specimen lease provided with the application form. 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 relation to works to the boilers and associated ventilation system as described in the application form.

Reasons for the tribunal's decision

The application

1. The landlord applied for dispensation from the statutory consultation requirements in respect of works to the boilers and associated ventilation system at the Property.
2. In completing the application form the applicant also suggested that the application concerns a long-term agreement but has since stated that this was a mistake.
3. The application is said to be urgent because three of the four boilers have been condemned and the remaining boiler is likely to fail within four weeks of continuous use. Additionally, the boilers required are in short supply due to COVID 19.
4. The landlord served a notice of intention under Section 20 of the Act on all respondents on 1 August 2020 and the application for dispensation on 31 July 2020.
5. Case management directions were given on 5 August 2020, requiring the Applicant to serve on the Respondents copies of the application form, with enclosures, and the directions.
6. The Applicant has through its representative confirmed to the tribunal that these documents were served on 12 August 2020.
7. The directions included a reply form for any leaseholder to indicate whether they objected to the application and whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 21 August 2020.
8. The directions further provided that this matter would be determined on or after 27 August 2020 based on the documents, without a hearing, unless any party requested an oral hearing.
9. No leaseholder has responded and no party has requested an oral hearing.
10. Accordingly, this application has been determined based on the documents produced by the Applicant. On reviewing these documents, the tribunal considered that an inspection of the Property was not required and that a hearing was not necessary.

The Law

11. 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.
12. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
13. The only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.
14. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.**

The Property and the parties

15. The Property is described by the Applicant as a development of 154 leasehold independent living retirement properties comprising two two-storey blocks, one three-storey block, cottages, bungalows and Clubhouse.
16. The application was made against the leaseholders of those 154 flats and the landlord under the lease (the “Respondents”). The Applicant is the Management Company under the leases of the flats at the property.

The Applicant’s case

17. In the application form (as served on the Respondents), the Applicant states that they have recently been informed by their heating and boiler engineers that carbon monoxide was being emitted by three of the four boilers and that the remaining boiler was likely to fail within four weeks of continuous use.
18. The boilers are over 30 years old and all required replacing together with the ventilation system before the autumn/winter season. They provide heat and hot water to the elderly residents in the main house and to all the communal facilities.

19. The applicant states that three quotes have been obtained (details not provided) and that cost of the works is £86,312.50 plus VAT.

The Respondents' position

20. 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.
21. 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

22. 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.
23. This application for retrospective 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.
24. 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.
25. 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 replacement of the boilers and associated ventilation system described in the application form.
26. There was no application to the tribunal for an order under section 20C of the 1985 Act.
27. The Applicant management company shall be responsible for serving a copy of this decision on all leaseholders.

Mary Hardman FRICS IRRV(Hons)
26 August 2020

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).