



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

Case Reference : **BIR/00CN/LDC/2020/0010P**

Properties : **Flats 1-163 Viceroy Close, Edgbaston
Birmingham, B5 7UR**

Applicant : **Estate of I Carter (Deceased)**

**Applicant's
Representative** : **Principle Estate Management Limited**

Respondents : **Tenants of Flats 1-163 Viceroy Close
Edgbaston
The Residents Association**

Type of Application : **Application for Dispensation from
Consultation requirements s20ZA
Landlord and Tenant Act 1985**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member R. Bryant Pearson**

Date of Hearing : **22 September 2020**

Date of Decision : **24 September 2020**

DECISION

The tribunal is satisfied it is reasonable to dispense with consultation requirements in relation to qualifying works of boiler house control wiring to make safe and replace with new, installation of new boiler, pumps, Control Panels, electrical equipment and safety equipment the subject of this application.

1. On 17 August 2020 the Applicant the Estate of I Carter deceased issued this application pursuant to s27ZA Landlord and Tenant Act 1985 (the Act) for dispensation with all consultation requirements ordinarily required by s20 of the Act in relation to qualifying works necessary to repair the communal hot water and heating system supplying flats at Viceroy Close Edgbaston Birmingham.
2. On 18 August 2020 directions for determination of the application were issued. The directions provided for a paper hearing unless any party made a request for an oral hearing.
3. The direction also provided for the Applicant to send to each of the tenants (and the Residents Association) either by hand or first class delivery post copies of the application and the directions and display copies of the documents in a prominent position in the common parts of the property.
4. The directions required tenants who opposed the application notify their opposition to the tribunal and the Applicant by 2 September 2020.
5. The Applicant complied with the direction to give notice of the application to the residents. The tribunal has not received any objection from any tenant or resident. The Applicant asserted in the application that the Residents Association was consulted and consented to the application.

6. The application was made as a matter of urgency in order to protect the service charge funds against the cost of temporary hired equipment during the normal period of consultation under s20 of the Act.
7. The tribunal determined the application on the papers on 22 September 2020. The papers comprised the application and accompanying documents relating to the works, the lease and the directions.

The Property and the works

8. According to the application form the property comprising Flats 1-163 Viceroy Close Edgbaston comprises eight 4-6 storey blocks of purpose-built apartments each having a basement area. They were constructed in 1937. There are five boiler rooms on the property which supply the eight blocks with heating and hot water. This application relates to the boiler facilities in block three which is unshared with other blocks.
9. On 12 July 2020 a burst occurred overnight leading to loss of water. An inspection early on 13 July revealed water spraying over electrical controls and flooding in the boiler room. Isolation works was undertaken and the flooding pumped out of the room. Temporary repairs including supply of a temporary boiler were initiated immediately and hot water was reinstated by 17 July 2020.
10. Qualifying work required to ensure permanent supply of hot water and heating are described in the application as

“due to the age and condition of the wiring (VIR) there is now an urgent heed for the boiler house control wiring to be addressed making it safe and replacing the equipment with new. Installation of new boiler, pumps, Control Panels, electrical equipment and safety equipment.

The Reason for Dispensation

11. The applicant submitted that in order to keep heating and hot water services provided to the block immediate instruction for the work was required. Hire costs for temporary equipment as a quoted rate of £9000.00 +VAT would be incurred in the period normally required for the consultation process. The applicant submitted that such costs together with the cost of temporary boilers

would be wasted. Evidence in support of these estimates was produced. The basis of the claim was that unnecessary expenditure would be incurred in hire costs which would be payable from service charge funds.

12. Moreover, the Applicant submitted the condition of the wiring was a threat to life by reason of the water damage necessitating urgent attention to making the area safe. The Applicant gave instructions for effective and permanent repair on 24 July 2020 in order to avoid unnecessary hire charges and notified tenants and residents of the intention to make this application on 31 July 2020.

The Lease

13. The tribunal was shown one lease namely of 135 Viceroy Close but it is assumed that the leases for all flats are in substantially the same terms. The lease shown to the tribunal was made on 6 June 1980 between Consult Securities International Limited and Charles Thomas Anston and Barbara Ann Anston.
14. The relevant terms provide at clause 5(4) that the lessor will “*provide and maintain a good and sufficient and constant supply of hot water and cold water to the flatand also an adequate supply of heating in the hot water radiators and to remedy any mechanical breakdown as soon as possible in the hot water and central heating systems.*” The reciprocal obligation on the part of the lessee is set out at clause 2(2)(a) “*to pay and contribute to the Lessor (the agreed percentage) ofat (iii)(d) the cost of maintaining repairing decorating and renewingthe boilers and system for the supply of hot and cold water throughout the building.*”

The Statutory Framework

15. S20 of the Act limits the relevant contributions of tenants 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 an appeal from) the appropriate tribunalAnd subsection 3 provides that s20 applies to qualifying works if the relevant costs in carrying out the works exceed an appropriate amount.

16. S27Za of the Act provides in so far as relevant:

“(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,

17. By regulation 6 of Service Charge (consultation Requirements)(England) Regulations the appropriate amount (as referred to in s20 of the Act) is an amount which results in the relevant contribution of any tenant being more than £250.00

18. In *Daejan Investments Limited v Benson and Others* [2011] EWCA Civ 38 at para 44 Lord Neuberger applied the relevant provisions and regulations to give guidance on the approach to be adopted by the tribunal when considering an application under s27ZA as follows

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.

The Decision

19. Having considered the papers submitted in this case the tribunal determines it is reasonable to dispense with all consultation requirements in relation to the works described in its application and set out in this Decision at paragraph 10 above.
20. The relevant lease imposes usual reciprocal obligations on the parties requiring the landlord to supply and maintain equipment necessary for the supply of space and water heating and for the tenant to pay a sum rateable with the other tenants for the costs incurred by the landlord.
21. The relevant equipment suffered catastrophic failure resulting in a total failure of supply of hot water to the flat. The landlord reacted immediately by arranging for the restoration of supply and the appointment of suitably qualified engineers to carry out permanent repairs. The costs of the repairs amounted to a sum which placed the lessees at risk of paying more than £250.00 each thereby triggering the consultation obligations of s20 of the Act. The Applicant decided that the cost of arranging a temporary repair pending consultation would add an unnecessary charge to the service fund. Informal consultations with the Residents Association indicated the residents agreed that the permanent work should go ahead. Although the tribunal was not shown any information about the informal consultation, it has not seen any opposition to this application from any tenants. It therefore concludes there is no substantial objection to it.
22. In any event applying the principles set out by Lord Neuberger in *Daejan* the tribunal cannot see any prejudice to the tenants, rather the position is that by going ahead with the work the Applicant has saved the tenants from the wasted costs associated with a temporary repair.
23. For these reasons the application for dispensation from consultation requirements is granted.

Appeal

24. By Rule 36(2) of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.
25. Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal at the regional office that has been dealing with the case, for permission.

26. Any application for permission must be in writing and be received by the regional office of the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the decision to the person making the application.

27. 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.

28. 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.

Tribunal Judge PJ Ellis