



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

Case reference : **LON/00BE/LDC/2021/0004P**

Property : **Ruskin Park House, Champion Hill
London SE5 8TH**

Applicant : **Ruskin Park House Limited**

Representative : **SBP Law Solicitors**

Respondent : **The leases listed in the schedule to the
application**

Representative : **None**

Type of application : **An application under section 20ZA of the
Landlord & Tenant Act 1985 for
dispensation from consultation prior to
carrying out works**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb**

**Date and venue of
Hearing** : **16th February 2021**

Date of decision : **17th February 2021**

DECISION

Decisions of the Tribunal

This has been a remote hearing on the papers which has been not objected to by the parties. A face-to-face hearing was not held because all issues could be determined on paper. The documents referred to in this Decision are in a submitted bundle of 157 pages, the contents of which are noted.

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of essential remedial works to the heating and hot water system ('the remedial works') at Ruskin Park House, Champion Hill, London SE5 8TH ('the property') required under s.20ZA of the Landlord & Tenant Act 1985 ('the 1985 Act') for the reasons set-out below.

The estimated cost of the proposed remedial works is £245,082 inclusive of VAT. No tender price for all the works is provided by the Applicant.

The application

- 1 The application seeks a determination pursuant to s.20ZA of the Landlord & Tenant Act 1985 ('the 1985 Act') to dispense with the statutory consultation requirements associated with undertaking remedial works to remedy defects to the heating and hot water supply at this property.
- 2 An application was received by the First-tier Tribunal dated 18th December 2020, seeking dispensation from the consultation requirements. Directions were issued on 7th January 2021 to the Applicant. These Directions required the Applicant to advise all Respondents of the application and provide them with details of the proposed works and services.
- 3 The relevant legal provisions are set-out in the Appendix to this Decision.

Submitted information

- 4 This matter was determined by written submissions. The Applicant submitted a bundle of documents which included:
 - a. A copy of the Applicant's application [page 1-10 of the bundle];
 - b. The Applicant's statement of case [page 11- 16];
 - c. A specimen lease for the flats [page 22-58];
 - d. Copy of a report prepared by M and E Consultants FHP ESS dated 25th November 2020. [page 17-21];
 - e. Copy of a water system water quality report prepared by Parsloe Consulting dated 13th November 2020 [page 59-81];
 - f. Copy of Tribunal directions issued 7th January 2021 [page 104-109];
 - g. Copy of three Respondent comments to the remedial works [page 110-112];

- h. A specimen lease for the flats of the objectors [page 113-165];
- i. Quote 2410 from SELECT commissioning Limited contractors amounting to £76,314.68 inclusive of VAT for part of the proposed works [page 106-107];
- j. Copy of various Applicant to Tribunal correspondence [page 156-157].

The background

- 5 The property which is the subject of this application is Ruskin Park House, which consists of three blocks each with 5/6 storeys. There are 241 flats at the property.
- 6 In 2014-15 the existing communal heating and hot water system was renewed. The renewal works included new boilers, mains distribution pipework to the blocks and new riser pipework supplying heat interface unit in each block.
- 7 The new heating and hot water system proved unreliable with frequent failures from inception. In an attempt to remedy the ongoing problem the Applicant commissioned an investigation of the system in the final quarter of 2020. This revealed frequent blockage of strainers located in the heat interface units located in each flat. The identified cause of these blockages is iron corrosion products contaminating the system.
- 8 The Applicant sought advice on appropriate remediation works from their Mechanical and Electrical (M & E) Consultants, FHP ESS. The report dated 25th November 2020 describes the works necessary to address the identified defects. The M & E Consultants have sought advice from two contractors in preparing the works schedule.
- 9 These partner contractors are Watkins Heating Limited and Select Contractors Ltd. The Tribunal are told they both have experience of similar heating systems and specialist skills in remediation of the defects identified at the property.
- 10 A summary schedule of necessary remedial works is at pages {19-21 of the bundle} Annex A. The works are divided into three phases with a total works programme of 22 weeks. The estimated cost of the scheme is £245,082 inclusive of VAT.
- 11 The schedule specifies which of the partner contractors will carry out the different tasks. Select and Watkins undertake the majority with professional supervision shared by FHP ESS and a Water Treatment consultant, Parsloe consulting.
- 12 The bundle includes price quotes (numbers 2411 and 2410) for the work allocated to Select. These amount to £182,869.32 inclusive of VAT. No quotes are submitted for works allocated to any of the other contractors.
- 13 Three leaseholders submitted responses to the application for dispensation. The leaseholder of flat 219 supported the application. The leaseholders of flats

124 and 9 objected to the remedial works. No reasons were provided for the objection by either leaseholder.

- 14 A copy of a specimen lease for each flat is supplied. After review, the Tribunal are content the costs of carrying out the remedial works to the property are chargeable to the leaseholders. They also note the obligation held by the Landlord at Schedule 6, s (1) and (2) of the lease to provide heating and hot water to each flat.
- 15 The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the waking-watch and fire alarm system. This application does not concern the issue of whether any service charge costs are reasonable or payable.

The determination

- 16 The Tribunal has considered the papers lodged.
- 17 No supporting reasons are provided by the objecting leaseholders. Their objections are noted but without supporting reasons the Tribunal are unable to weigh the merits of their disagreement.
- 18 There is a demonstrated need to carry out the works urgently to prevent the frequent failure of the heating and hot water system in the flats within the property. The Tribunal are told some 10-15 households a day suffer a failure to their supply. They are also told that the current cost of carrying out ad hoc repairs to maintain the heating and hot water supply to the leaseholders is approximately £18,000 to £24,000 per month.
- 19 Due to the frequency of system failure at the flats the Tribunal concede delay to undertaking the remedial works would increase the interim repair charges to the leaseholders and insistence on a s20 consultation could escalate these costs.
- 20 The Tribunal are told that the leaseholders include vulnerable and elderly residents who are most at risk from heating system failure.
- 21 The Tribunal conclude that the current heating and water heating facility at the property is wholly unsatisfactory and there is an urgency to undertake the remedial works.
- 22 The Tribunal cannot identify any prejudice caused to the Respondents by the grant of dispensation from the statutory consultation procedure.
- 23 It is for these reasons they are satisfied it is appropriate to dispense with the consultation requirements for the remedial works.
- 24 **This decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.**
- 25 **In accordance with paragraphs 9 and 10 of the Directions, it is the Applicant's responsibility to serve a copy of the Tribunal's Decision on all Respondent leaseholders to the Application.**

Name: Ian Holdsworth **Date:** 17 February 2021
Valuer Chairman

Appendix of relevant legislation

Section 20 of the Act

- (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) a leasehold valuation 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.

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).