



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

Case reference : **LON/00BK/LDC/2021/0172**

Property : **1-45 Imperial Court , 55-56 Prince
Albert Road, London, NW8 7PT**

Applicant : **Imperial Court (Regents Park) Limited**

Representative : **James Andrew Residential**

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** : **10th August 2021**

Date of decision : **11th August 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 98 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 1-45 Imperial Court, 55-56 Prince Albert Road, London, NW8 7PT ('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 £15,391.20 inclusive of VAT.

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 5 July 2021, seeking dispensation from the consultation requirements. Directions were issued on 9 July 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 tribunal directions [page 2-6 of the bundle];
 - b. A copy of a report on damage to heat plates prepared by the Applicant's representative's [page 7-8];
 - c. Copy of two service reports and remedial works quotation prepared by maintenance contractors Hamworthy Heating Limited dated 10 and 11 June and 2 July 2021. [page 9-19];
 - d. Copy of section 20 notice to leaseholders dated 1 July 2021 [page 20-23];
 - e. Copy of tribunal application dated 5 July 2021 [page 24-33];
 - f. Copy of leaseholder Flat 15 comments to the remedial works [page 36-63];
 - g. A specimen lease for the flats [page 64-98];

The background

- 5 The property which is the subject of this application is 1-45 Imperial Court , 55-56 Prince Albert Road, London, NW8 7PT, which consists of a block of 40 private residential dwellings mostly occupied by elderly persons.
- 6 In August 2019 the existing communal heating and hot water system was renewed. The renewal works included two new Hamworthy Heating Limited boilers, a mains low temperature hot water distribution system and associated heating plant and equipment.
- 7 The tribunal are told it is suspected the new heating and hot water system was not serviced after commissioning. The managing agents instructed Hamworthy Heating Limited to service the boilers in March 2021. In the following month one of the boilers began to make a “kettling noise” and operation was suspended. The manufacturer was instructed to strip down the boiler to identify the cause of the problem. This inspection discovered two heat plates in the boiler damaged beyond repair. The two failed plates will now need replacement to ensure effective operation of the boiler.
- 8 The Applicant also intends to appoint a Mechanical and Electrical (M & E) Consultant, to investigate the cause of the failure and advise whether the costs of renewal can be reclaimed under the warranty provisions of the boiler installation.
- 9 The bundle includes a price quote from Hamworthy (Reference 74016624) for the work. This amounts to £15,391.20 inclusive of VAT. The tribunal are told the managing agent obtained a quote for the remedial work from DMG but this was higher than the Hamworthy quote.
- 10 The managing agent issued the initial Notice of Intent to carryout works to the property pursuant to Section 20 of the Landlord and Tenant Act 1985 on 1 July. This Notice was sent to all leaseholders at the property.
- 11 The leaseholder of flat 15 submitted the only response to the application for dispensation. This leaseholder complained that previous boiler works had not been carried out competently by the contractors. She contended no further work should be done until the liability for the earlier works is resolved and a warranty claim made. She also criticised the quality of earlier boiler and heating works.
- 12 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.
- 13 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 remedial works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

The determination

- 14 The tribunal has considered the papers lodged.

- 15 The reasons provided by the objecting leaseholder are noted. The issues raised by the objector regarding reasonableness of the proposed works costs is a material consideration but should be considered through a Section 27A application to tribunal. The objections do not persuade the tribunal that material detriment would be caused to leaseholders by the grant of dispensation from statutory consultation.
- 16 There is a demonstrated need to carry out the works urgently to prevent the failure of the heating and hot water system at the property. The tribunal are told without repair the property would be dependent upon a single heating boiler with the associated risks of failure.
- 17 The tribunal are told that the leaseholders include vulnerable and elderly residents who are most at risk from heating system failure particularly during the winter months.
- 18 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.
- 19 The tribunal cannot identify any prejudice caused to the Respondents by the grant of dispensation from the statutory consultation procedure.
- 20 It is for these reasons they are satisfied it is appropriate to dispense with the consultation requirements for the remedial works.
- 21 **This decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.**
- 22 **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:** 11 August 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).