



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

Case reference : **LON/00AH/LDC/2022/0095**

Property : **Pinnacle Apartments, Keats
Apartments, Tennyson Apartments,
Rosetti Apartments & Waterhouse
Apartments, Saffron Square, Wellesley
Road, Croydon, CR0 2FT**

Applicant : **Berkley Homes (South East London)
Limited**

Representative : **Bretherton's LLP**

Respondent : **All leaseholders Saffron Square,
Wellesley Road, Croydon, CR0 2FT**

Representative : **In person**

Type of application : **For dispensation from statutory
consultation**

**Tribunal
member(s)** : **Judge Dickie
Mr O Dowty**

**Date of
determination** : **18 April 2023**

DECISION

Decisions of the tribunal

The tribunal grants the application for dispensation from statutory consultation in respect of the qualifying long term agreement.

The application

1. The applicant is the freeholder of the subject premises, which are 5 blocks of flats, Pinnacle Apartments, Keats Apartments, Tennyson Apartments, Rosetti Apartments, and Waterhouse Apartments, Saffron Square, Wellesley Road, Croydon. There are 791 flats across all 5 blocks. The respondents are the leaseholders of the flats.
2. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“The Act”) dispensing with statutory consultation in respect of a qualifying long-term agreement entered into on 10 May 2022. The 5-year agreement is for the monitoring, service and maintenance contract for the combined heat and power system (“CHP”) for the blocks with Centrica Business Solutions UK Limited (“the Agreement”). No statutory consultation has been carried out.
3. An oral hearing took place on 10 March 2023. The applicant was represented by counsel Cecily Crampin. The only respondent in attendance was Sarah Ho of 205 Pinner Court. An inspection of the premises by the tribunal was not necessary.

Procedural History

4. Directions were issued on 1 June 2022 for the determination of the application on the papers. Those directions were varied on 22 July 2022. A number of leaseholders objected to the application, a small number of whom requested an oral hearing. It seems that the directions were not fully complied with and that a number of leaseholders did not receive notice of the application. Therefore, a remote video case management hearing was listed on 25 November 2022 before Judge Mohabir and Mr Naylor. That tribunal decided that new procedural directions were required altogether and ordered the directions of 1 June 2022 and 22 July 2022 be set aside.
5. The new directions of 25 November 2022 required the applicant by 9 December 2022 to serve the application, supporting evidence and those directions on the leaseholders. The tribunal is satisfied that the applicant complied with this direction by sending the documents by email and by posting them in the entrance to every block (as well as sending them by Dwellant to those leaseholders who were signed up to that electronic communications system). The directions provided that any leaseholder

of Saffron Square who opposed this application then had until 13 January 2023 to send a witness statement in response to the application setting out the reasons why the application is opposed. The applicant has not received any such witness statement or other objection to the application since the new directions. Those directions gave any party the right to request an oral hearing by 24 February 2023 and no such request was received. The tribunal nevertheless listed the matter for an oral hearing.

6. The applicant instructed solicitors for that hearing and produced an updated evidence bundle which by an email sent on 8 March 2023 to all leaseholders was made available for download. Ms Ho, receiving this notification of the hearing date, attended the hearing. The applicant confirmed that 15 leaseholders had downloaded the bundle before the hearing. None had applied for a postponement. In light of Ms Ho's concern about the manner of notification of the hearing, the tribunal considered whether it ought to adjourn the hearing in all of the circumstances, and heard submissions from the parties present, but declined to do so.

Reasons for decision not to adjourn the hearing

7. The tribunal considered all of the circumstances in reaching its decision to proceed with the hearing, including the lengthy procedural history to this application. Notably, the directions of 25 November 2022 completely reset all of the procedural management of the application and made clear to all of the leaseholders that any who opposed the application needed to file an objection according to those directions, and none did so. No previously filed objection could be understood to be imported as compliance with the entirely new directions. Ms Ho confirmed she had received the directions of 25 November 2022, and did not put forward a good reason for failing to comply by filing a statement, citing workload over the start of the year. There had been no application for a postponement or request from any leaseholder for an oral hearing. The directions made clear that any who wanted an oral hearing had to make a request after the date of the issue of those directions.
8. In the circumstances, the tribunal could properly have considered this matter on the papers. Indeed, this tribunal takes the view that a paper determination without an oral hearing would have been an appropriate means of disposal. The interests of justice do not require that this matter is adjourned. The leaseholders have had a fair opportunity to object to the application pursuant to the new directions of the tribunal.

The Hearing

9. The tribunal considered the written evidence of the witnesses, Mr John Westerman of Premier Estates and Mr James Beagley of independent consultants Focus FM who had submitted a letter. They attended the hearing and made themselves available to cross examination by Ms Ho. Ms Lisa Marie Bradnock of Premier Estates, who had signed the applicant's statement of case, also attended the hearing, as did Ms Claudette Gomez of Barclay Homes.
10. The CHP has been set up to have remote monitoring. The case put forward for the applicant was that Centrica designed and manufactured the CHP when the blocks were built, and retain the intellectual property rights for the remote monitoring software. This remote monitoring and condition reporting, being limited to Centrica, was described by John Westerman as a closed protocol system. The CHP has been remotely monitored by Centrica since installation. His opinion was that tendering to other contractors is likely to produce higher quotes than from Centrica because the contractor would have to liaise and obtain parts from Centrica. His analysis concluded that contracting with someone else, and for a contract of less than 5 years which would not include in its price expected minor and major overhauls of the system, would not be cost effective. The applicant had previously entered into under 12 months and shorter contracts. Both minor and major overhauls are due in approximately 1 and 5 years based on operational run hours of the engine. Mr Beagley of Focus FM also produced calculations to support his view that the 5-year Centrica contract represents an approximate annual saving of £65,000 as against five 12-month agreements with that company.
11. Ms Ho's questions to Mr Westerman and Mr Beagley related largely to her concerns regarding the management arrangements for the site. She felt the dispensation matter could have been handled better and more efficiently. She questioned the reliability of Mr Westerman's evidence as he is a technical manager and not a registered engineer, and Mr Beagley's as she believed that Focus FM had a conflict of interest and is not an external specialist. The tribunal did not find that she substantiated these criticisms or undermined the weight of the evidence, which the tribunal found reasoned and persuasive.

Decision and Reasons

12. Section 20ZA(1) of the Act provides:

“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.”

13. The tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. The factual burden is on the leaseholders to identify some relevant prejudice they have suffered as a result of the landlord’s failure to comply with the statutory consultation requirements. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate. The tribunal has the power to grant dispensation on appropriate terms and can impose conditions. Where relevant prejudice has been established the tribunal should, in the absence of some good reason otherwise, require the landlord to reduce the amount of service charges claimed to compensate the leaseholders fully for that prejudice. Conditions can include the payment of the leaseholders' legal costs of exploring whether they had been prejudiced. The leaseholders have produced no evidence on the basis of which the tribunal could conclude that they had suffered any such prejudice from the failure to consult.
14. The tribunal has taken note of the fact that no leaseholder has taken the opportunity to object to the application since the reissued directions of 25 November 2023. However, in light of the fact that there had been some objection to the application pursuant to the original directions the tribunal has carefully assessed the weight of the applicant's evidence. The tribunal is satisfied that the applicant has shown that it is reasonable to dispense with the statutory consultation requirements on the likely increased cost to the leaseholders if they had chosen another contractor.
15. The tribunal finds there is therefore sufficient evidence that it was appropriate to enter into the qualifying long-term agreement without carrying out statutory consultation. In all the circumstances, the tribunal considers it reasonable to grant the application for dispensation from statutory consultation. No conditions on the grant of dispensation are appropriate and none are made.
16. This decision does not affect the tribunal’s jurisdiction upon an application to make a determination under section 27A of the Act in respect of the reasonable and payable cost of the contract, should this be disputed by any leaseholder.

Name: Judge F Dickie

Date: 18 April 2023

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).