FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UQ/LDC/2023/0005**
Property	**:**	**Gabriel Court, South Road, Saffron Walden, Essex CB11 3GZ**
Applicant	**:**	**McCarthy & Stone Retirement Lifestyles Limited**
Respondents	**:**	**The leaseholders of the property**
Type of application	**:**	**For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal member	**:**	**Judge K. Saward**
Date of decision	**:**	**2 May 2023**

DECISION

Description of hearing

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents comprise the application form, estimate for the cost of the works, copy letter sent to the leaseholders, a specimen lease and associated correspondence with the tribunal. The contents of all these documents are noted. The order made is described below.

Decision of the tribunal

(1) The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of works to replace a compressor for "air source heat pump 2" at the property.

The application

1. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985, as amended ("the 1985 Act") for the retrospective dispensation of consultation requirements in respect of certain "qualifying works" (within the meaning of section 20ZA).

2. The applicant is the freeholder and landlord of the property known as Gabriel Court, South Road, Saffron Walden, Essex CB11 3GZ ("the property"), being a purpose-built block of flats comprising one and two bedroom apartments for an age-restricted community over sixty years of age.

3. The respondents are the leaseholders of the flats in the property who are potentially responsible for the cost of the works under the terms of their lease.

4. The qualifying works are described in the application as urgent works to replace a compressor for "air source heat pump 2".

5. By virtue of sections 20 and 20ZA of the 1985 Act, any relevant contributions of the respondents through the service charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation etc) (England) Regulations 2003 were: (a) complied with; or (b) dispensed with by the tribunal. In this application the only issue is whether it is reasonable to dispense with the consultation requirements.

6. Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under section 27A of the 1985 Act to determine the payability of any service charge under the lease.

Paper determination

7. A copy of a specimen lease has been supplied. It contains a clause making the landlord responsible for maintaining, repairing and renewing the Building not otherwise demised by the lease. The 'Building' is defined as the building forming part of the Estate comprising apartments together with communal areas and facilities.

Provision is made requiring the payment by the leaseholder of service charges for, amongst other things, costs and expenses incurred by the landlord in in connection with the repair, maintenance and renewal of the Building and the provision of services.

8. The application is dated 8 February 2023. Directions were issued by Judge Wyatt on 28 February 2023. Those directions required the applicant landlord, by 15 March 2023, to send to each of the leaseholders, by hand delivery or first-class post, copies of (i) the application form (excluding any list of leaseholders' names and addresses); (ii) an estimate of the cost of the relevant works including any professional fees and VAT (if possible); (iii) any other evidence relied upon; and (iv) the directions. By the same date, the applicant landlord was required to file with the tribunal a letter confirming this had been done and to provide the date.

9. By letter dated 2 March 2023, the applicant confirmed compliance with the above directions by the House Manager at the property delivering to each leaseholder a copy of the application form, tribunal directions and quote for the works. The letter confirmed that service had taken place on 2 March 2023.

10. The directions gave those leaseholders who oppose the application until 29 March 2023 to respond to the tribunal by completing a reply form and to send to the landlord a statement in response to the application with a copy of their reply form and copies of any evidence or other documents relied upon.

11. No response or objection has been submitted by the respondents who have taken no active part in this application.

12. The directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. A bundle was submitted to the tribunal in paper form as required along with an electronic file.

13. The directions provided that the tribunal would determine the application based on written representations unless any request for an oral hearing was received by 29 March 2023. No such request was received. Therefore, this application has been determined by the tribunal on the information supplied by the applicant.

The law

14. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

15. In the case of *Daejan Investments v Benson and others* [2013] UKSC 14 the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] 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'*.

Findings of fact

16. For the following reasons the tribunal finds that there is sufficient evidence of urgency, that dispensation is justified, and an absence of evidence of prejudice.

17. The applicant gives the reasons that follow for seeking dispensation.

18. It is submitted that the compressor for "air source heat pump 2" is irreparable and requires replacement. This is said to have been discovered by the maintenance provider whilst visiting the property to install a new compressor for "air source heat pump 1". Those works had been recommended after a service visit and were undertaken following a section 20 consultation procedure.

19. The applicant considers that the compressor to air source heat pump 2 should be replaced as soon as possible, and without full compliance with the section 20 requirements to ensure that heating and hot water remains consistent at the property. Replacement of the compressor is said to be vital to avoid overworking and potentially damaging the single remaining compressor and air source heat pump.

20. Notice of intention to undertake the works was sent to leaseholders on 3 February 2023. The letter advised that urgent works were required to the compressors to keep the hot water and heating system in working order. The letter states that arrangements have been made for the works to be carried out immediately. It informs leaseholders that application has been made to the tribunal to dispense with consultation under section 20 in view of the urgency and time limitations.

21. The application states that the House Manager has kept the leaseholders up-to-date with the works, which appear from the application form to have already been carried out.

22. The cost for both compressors is given as £10,081.54 plus VAT, as estimated by a plumbing and heating engineer company on 15 December 2022 for "two compressor replacements on one LA60".

23. The application is quite scant in detail. However, there is sufficient reason to conclude that the works were needed without delay. On the information submitted by the applicant, and in the absence of any objections or submissions from the respondents, the tribunal is satisfied that the qualifying works were necessary and urgent to maintain a properly working heating and hot water system in the interests of health and safety. That was particularly so given discovery of the fault over the winter months when the need for a fully functioning heating and hot water system would be at its highest.

24. As the respondents have raised no objection to the works, the Tribunal finds no evidence that the respondents would suffer prejudice if dispensation were to be granted.

The Tribunal's decision

25. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".

26. In the circumstances set out above, the tribunal considers it reasonable to dispense with the consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.

27. This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness of the work and/or whether any service charge costs are reasonable and payable.

28. There is no application before the tribunal for an order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge). This could be the subject of a future application should any costs be charged to the leaseholders.

29. It is the responsibility of the applicant to serve a copy of this decision on all respondents.

Name: Judge K. Saward Date: 2 May 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).