



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

Case reference : **CAM/38UB/LDC/2023/0007**

Property : **Heron Place, Nurseries Rd,
Kidlington, Oxon OX5 1FU**

Applicant : **McCarthy & Stone Retirement
Lifestyles Ltd**

Representative : **N/A**

Respondent : **The Leaseholders of Heron Place,
Nurseries Rd, Kidlington, Oxon
OX5 1FU**

Representative : **N/A**

Type of Application : **For dispensation of the
consultation requirements under
s.20ZA Landlord and Tenant Act
1985**

Tribunal member(s) : **Judge Stephen Evans**

Date of decision : **25 April 2023**

DECISION

The Tribunal determines that an order for unconditional dispensation under section 20ZA of the 1985 Act shall be made dispensing with all the consultation requirements.

The Application

1. The Applicant is the landlord of Heron Place, Nurseries Rd, Kidlington, Oxon OX5 1FU (“the Property”). This is a purpose built block of 31 flats comprising one and two-bedroom flats, and is age restricted for the over 60s.
2. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the retrospective dispensation of consultation requirements in respect of qualifying works carried out.
3. The Respondents are the leaseholders of the Property.
4. The grounds given in the Application set out the following:

“On 15 March 2022, KGN Pillinger, attended Heron Place to carry out their annual service visit and discovered a fault on pump number 2 which was showing an internal pressure fault. They forwarded their engineer’s report to the contracted air source heat pump maintenance contractor for the development, GP Plumbing, who advised [the Applicant] of the fault and provided a quotation for the repair works. [The Applicant] then instructed GP Plumbing to attend site to carry out the repairs on 29 April 2022. The heating system was not functioning optimally due to the fault on pump 2. This affected the heat output of the system as a whole which resulted in a decrease in the temperature of the water used by our homeowners. The work needed to be done as a matter of urgency to ensure our homeowners had a functioning hot water system and were not left without hot water.”

And

“[The Applicant] will write to all homeowners advising them of the works and the cost that are involved alongside advising of our Application for dispensation.”

5. As to why dispensation is being sought, the Applicant further writes:

“The work needed to be done as a matter of urgency to ensure that the homeowners were not subjected to the adverse effects longer than necessary and to ensure a fully functioning heating system prior to the arrival of winter. The total cost is £8612.40 including VAT for the completion of the aforementioned works. Purchase order 206589 has been raised in respect of this work. We received acknowledgement of this order on 1 July 2022 by e-mail from Mr. John Fenton maintenance manager GP Plumbing.”
6. The Applicant’s written materials include an “estimate” from GP Plumbing & Heating Ltd, confirming that they supplied and installed a

new Magna pump, carried out all electrical terminations and pipework modifications (if required) and fully vented and tested the pump operation/ rotation, removing all redundant materials from site. The cost of the works is as stated in the Application .

7. In accordance with Tribunal directions, the Applicant wrote to all leaseholders to inform them of this Application. By email dated 22 March 2023, the Applicant informed the Tribunal that all residents of the Property had been served with all necessary paperwork.
8. In this regard, the Tribunal has been provided with a letter from the Applicant to the Respondents dated 15 March 2023, which reads:

“Dear Homeowners and Residents,

Peel Court- Air Source Heat Pump Replacements

I am writing to advise you of urgent works that were carried out to the Heat Pumps at Heron Place.

McCarthy & Stone are seeking dispensation as the heating system was not functioning at its optimum rate due to a pump requiring replacement. This affected the heat output of the system which resulted a decrease in the temperature of the water used by homeowners. The work needed to be done as a matter of urgency to ensure that the homeowners were not subjected to the adverse effects longer than necessary and to ensure a fully functioning heating system prior to the arrival of winter.

The cost for the lift work [sic] is £8612.40 including VAT.

Due to the cost involved, we would normally need to complete a section 20 consultation with all leaseholders. However, in the light of the urgency of the works and the time limitations involved in section 20, we have applied to the First Tier Tribunal for dispensation of the section 20 process on this occasion. The cost of this work was met by the contingency fund as a development cost.

Please find enclosed documents from the First Tier Tribunal for further information about the process and the next steps to take regarding engagement. Please note there are some instructions within the directions document from the first tier Tribunal for homeowners.”

9. The Tribunal directions provided for leaseholders who opposed the Application to complete the Reply form and a statement of case.
10. None of the Respondent leaseholders have replied to the Tribunal raising an objection to the Application.
11. The Tribunal’s directions also provided that this matter would be considered by way of a paper determination unless a hearing was

requested. A hearing was not requested and accordingly the Application was considered on the papers today.

12. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
13. The Applicant has filed, and the Tribunal has considered, a bundle comprising the Application, the directions, a specimen lease, the letter dated 15 March 2023 and the GP Plumbing estimate referred to above.

The issue

14. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act. **The Application does not concern the issue of whether any service charge costs will be payable or reasonable.**

Relevant Law

15. The consultation requirements pursuant to s.20 of the Landlord and Tenant Act 1985 apply to qualifying works and qualifying long term agreements. This case concerns the former.
16. The consultation requirements must be complied with, and if they are not complied with, or if compliance has not been dispensed with by the Tribunal, the amount of the relevant costs incurred on carrying out the works is limited to £250 per leaseholder, as the limit currently stands.
17. The consultation requirements applicable in this case are those contained in Schedule 4 Part 2 (Qualifying Works – no public notice) of the Landlord and Tenant Act 1985.
18. In summary, these require:
 - A Notice of Intention by the landlord and opportunity for representations by leaseholders
 - Estimates to be obtained
 - Landlord must supply to each leaseholder and recognised tenants' association a statement giving details of at least two estimates, at least one from a wholly unconnected person and including any estimate received from a nominated person, and provide a summary of observations received and his response to them
 - Landlord must give notice to each leaseholder and recognised tenants' association specifying time and place where all the

estimates can be inspected and invite observations as above and must have regard to any observations made

- On entering into a contract for the carrying out of the qualifying works, the landlord must give notice to the leaseholders and any recognised tenants' association.

19. 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".

The Tribunal's decision

20. The Tribunal determines that an order for unconditional dispensation under section 20ZA of the 1985 Act shall be made dispensing with the consultation requirements.

Reasons for the Tribunal's decision

21. 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". The Tribunal has also had regard to the leading case of *Daejan Investments Ltd v Benson* [2013] UKSC 14, which confirmed that when considering an Application under section 20ZA, the Tribunal should focus on the extent, if any, to which the leaseholders are prejudiced by the failure to comply with the consultation requirements, in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations.
22. The Tribunal takes into consideration that these were urgent works, and that it would appear that there was a drop in temperature of the water used by homeowners. The reference to the arrival of winter appears to have been in error, given that the works were undertaken in March 2022. So too the reference to lift work.
23. The Tribunal further takes into consideration that the residents are elderly and vulnerable. As there are two 30 day periods of consultation under the consultation requirements, allowing for the time needed to obtain estimates, the whole process would have been likely to take at least three months. It is understandable that the Applicant could not wait that long in this case.
24. The Tribunal also takes into consideration that the works appear to have been funded from a reserve fund, with no evidence of an additional demand being made.
25. Lastly, by way of observation only, it would appear from the sample Lease provided within clause 1 ("Service Charge Fraction"), in conjunction with Schedule 8, that the most that any leaseholder would

have to pay for the total cost of the works would be $3/76 \times £8612.40 = £339.96$. If that is right (and the Tribunal does not have any clearer picture) the sum payable by the leaseholders who pay the most in the Property would not be significantly above the statutory threshold of £250 in any event.

26. In considering the lessees' position, the Application has not been opposed by any of the Respondents. There is no ostensible prejudice to the Respondents. Whilst the costs of the works may be estimated in the region of £8600 according to the quotation, as stated above, this Application does not concern the issue of whether any service charge costs will be reasonable or payable.

27. In the circumstances, the Tribunal is satisfied that it is appropriate to grant an order for dispensation as sought.

28. In accordance with the directions dated 8 March 2023, the Applicant is responsible for serving a copy of this decision on all leaseholders.

Application under s.20C

29. There was no Application for an order under s.20C of the 1985 Act before the Tribunal.

Name: Tribunal Judge Evans

Date: 25 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).