



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

Case reference : **LON/00BK/LDC/2023/0185**

HMCTS code : **P: PAPER REMOTE**

Property : **1-35 Embassy Court, 45 Wellington Road, London, NW8 9SX**

Applicant : **Wellington Road Properties Limited**

Representative : **Breechers LLP**

Respondents : **The 35 leaseholders at Embassy Court**

Type of application : **Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**

Tribunal member : **Judge Robert Latham**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **16 October 2023**

DECISION

The Tribunal grants this application to dispense retrospectively with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of works to replace the Ground Source Heat Pump with an Air Source Heat Pump.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The applicant has filed a bundle in support of the application.

The Application

1. On 18 July 2023, the Applicant landlord applied for retrospective dispensation from the statutory duty to consult in respect of works to 1-35 Embassy Court, 45 Wellington Road, London, NW8 9SX (“the Property”). Embassy Court is a purpose built block of 35 flats.
2. The application relates to the following works: the replacement of the Heat Pump (“GSHP”) with an Air Source Heat Pump (“ASHP”) and associated works to the communal pipework and replacement of the Building Management System (“BMS”). The application form states that the works will be carried out in the following order:
 - (1) The replacement of the BMS throughout the Building, including the associated flat controls.
 - (2) Boiler replacement works as the existing boiler will become insufficient when the GSHP is replaced with a new ASHP.
 - (3) The decommission of the GSHP and the installation of the ASHP.
3. In its application form, the Applicant states on 23 April 2023, it served a Notice of Intention. The notice described the works as the “replacement of the landlord’s assets to include the Low Temperature Hot Water Systems, the chilled water systems; BMS controls”. On 30 June 2023, the Applicant served a Notice of Estimates in relation to “phases 1 & 2”. Without prejudice to its contention that a valid Notice of Intention was served, dispensation is sought in respect of the same, given the delay between service of the notice dated 23 April 2021 and carrying out the works. Although a competitive tender exercise was followed, no Notice of Estimates was served in respect of the replacement of the BMS. These works had commenced. A Notice of Estimates had been served in respect of the other works (“phases 1 & 2”). These works had not commenced and no contractor had been appointed.
4. On 31 July 2023, the Tribunal issued Directions. The Directions stated that the Tribunal would determine the application on the papers, unless any party requested an oral hearing.

5. By 15 August 2023, the Applicant was directed to send to the leaseholders by email, hand delivery or first-class post: (i) copies of the application form (excluding any list of respondents' names and addresses) unless already sent by the applicant to the leaseholder/sublessee; (ii) if not already provided, in the application, a brief statement to explain the reasons for the application; and (iii) the directions. The Applicant was further directed to display a copy of these in a prominent place in the common parts of the property.
6. By 4 September 2023, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and send it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the Applicant a statement in response to the application.
7. This application was initially opposed by two leaseholders, namely Poussard Limited (Flat 22) and Sarah Ismail (Flat 11). This objection has now been withdrawn. On 25 September 2023, there was a mediation in respect of LON/OOBK/LSC/2023/0152. A settlement was reached and this application has now been withdrawn. On 28 September 2023, a Procedural Judge directed that the current application should be determined on the papers.
8. Only one leaseholder, Mr Neeraj Sapra (Flats 16 and 25) now opposes the application. In his email dated 4 September 2023, he states:

“As a leaseholder we were sent a circular email with some court documents on the 15th August 2023, without any explanation as to why this dispensation had been sought. There are some extensive heating/cooling works that have already started in the building and I want to make sure that everything has been done correctly and therefore want to preserve my rights and as such object to this application.”

9. The Applicant has provided a Bundle of Documents (12 pages) in support of the application. The Applicant has provided a witness statement from Vaida Majauskaite, its solicitor. The phases of the proposed works are described in these terms:

“a. Testing and validation of the Respondent's assets, the FCU and the comfort and heating systems in the individual flats ("Phase 0") (formerly known as "Project 3");

b. Boiler replacement works as the existing boiler would become inadequate if the GSHP were replaced with a new Air Source Heat Pump ("ASHP") ("Phase 1");

- c. The decommission of the GSHP and the installation of the ASHP ("Phase 2");
 - d. FCU and radiator remedial works within each flat ("Phase 3");
and
 - e. The replacement of the Building Management System ("BMS") throughout the building, including the associated flat controls ("Phase 4").
10. Vaida Majauskaite concludes: "For the avoidance of doubt, without prejudice to the contention that the Applicant has complied with part of the consultation requirements for various phases (as set out in the application form), the application is made in relation to all phases."

The Law

11. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Limited v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

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 highlights the following passages from the speech of Lord Neuberger in *Daejan*:

(i) Sections 19 to 20ZA of the Act are directed towards ensuring that tenants are not required to (a) pay for unnecessary services or services which are provided to a defective standard (section 19(1)(b)) and (b) pay more than they should for services which are necessary and are provided to an acceptable standard (section 19(1)(b)). Sections 20 and 20ZA are intended to reinforce and give practical effect to these two purposes (at [42]).

(ii) A tribunal should focus on the extent, if any, to which the tenants would be prejudiced in either respect by the failure of the landlord to comply with the Requirements (at [44]). The only question that the tribunal will normally need to ask is whether the +tenants would suffer “real prejudice” (at [50]).

(iii) The tenants’ complaint will normally be that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it (at [69]).

(iv) If prejudice is established, a tribunal can impose conditions on the grant of dispensation under section 20(1)(b).

(v) Where the extent, quality and cost of the works are unaffected by the landlord’s failure to consult, unconditional dispensation should normally be granted (at [45]).

The Tribunal's Decision

14. **The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

15. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. It is apparent that the Applicant has served both a Notice of Intention and a Notice of Estimates in respect of the proposed works. The application has been made because the Notice of Estimates did not include the works in respect of the BMS.
16. Mr Sapra does not suggest that the works were not required. He has rather been confused by the nature of the application and wishes to protect his interests. In granting this application for dispensation, the Tribunal is not prejudicing Mr Sapra. He retains his right to challenge the cost of the works and any associated fees passed on through the service charge if he considers the costs to be unreasonable or that the quality of the works has been inadequate.
17. In the circumstances, it is appropriate to grant dispensation without any conditions. However, the Tribunal expects the Applicant to secure best value by seeking competitive quotes for the works that are proposed. It seems that it has done so.
18. The Directions make provision for the service of the Tribunal's decision. The Tribunal will email a copy of its decision to the Applicant and to Mr Sapra. The Applicant is responsible for serving a copy of the Tribunal's decision on the other Respondents.

Judge Robert Latham
16 October 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 **by e-mail** 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).