



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

Case reference : **MAN/00BN/LDC/2023/0012**

Property : **Christabel, 106 Dalton Street, Manchester
M40 7EH**

Applicant : **Christabel and Sylvia (Manchester) Management
Limited**

**Applicant's
Representative** : **Residential Management Group Limited**

Respondents : **Various Residential Long Leaseholders**

**Type of
Application** : **Landlord & Tenant Act 1985 - Section 20ZA**

**Tribunal
Members** : **Tribunal Judge S Moorhouse LLB
J Jacobs MRICS**

**Date of Paper
Determination** : **20 July 2023**

DECISION

DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes an unconditional determination to dispense with the requirement to consult with the Respondents on the works to Christabel, 106 Dalton Street, Manchester M40 7EH described in Schedule 1.

REASONS

The Application

2. The application ('the Application') was made on 31 January 2023 by Christabel and Sylvia (Manchester) Management Limited ('the Applicant'). It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by section 20.
3. Dispensation is sought for the carrying out of certain works related to water heating described in Schedule 1 ('the Works'). The Works are to be carried out to Christabel, 106 Dalton Street, Manchester M40 7EH ('the Property'), comprising a 13 storey building with 62 residential apartments. The Applicant is the management company for the Property responsible for its maintenance and repair and joined into the individual underleases of the apartments in this capacity. The Respondents are the leaseholders of the apartments. A sample underlease provided by the Applicant shows the term to be 250 years (less 10 days) from 4 February 2005. The leaseholders of apartments 304 (Jayne and Mark Bradley) and 603 (Timothy Volker and Ana Suarez) filed responses to the Application.
4. Directions were issued on 28 April 2023. The tribunal has the benefit of the Applicant's statement of case and accompanying documents, the two responses filed by leaseholders and a reply to these by the Applicant.
5. The Applicant company indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because only two sets of leaseholders had responded to the Application, no party had requested a hearing and because there was sufficient information before the tribunal to reach a decision. It was unnecessary to conduct an inspection of the Property in view of the matters in issue.

The Law

6. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 2. Section 20ZA subsection (1) provides that the tribunal may make a determination to dispense with consultation requirements 'if satisfied that it is reasonable to dispense with the requirements'.
7. The tribunal considers the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*') to be the leading case on dispensation. In *Daejan* Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants. Lord Neuberger went on to hold that a tribunal is permitted to grant dispensation on

terms, including compensating leaseholders for any prejudice suffered by requiring a landlord to reduce the amount claimed as service charge, and including an order for costs.

Findings of fact and Reasons for decision

8. It is common ground that in October 2018 the two water heaters at the Property failed, sequentially. A proposal and quote of £27,410.56 + VAT was obtained from Rescom on 29 October 2018 and a second proposal and (higher) quote from Bolton Pipe Services Limited was obtained on 6 November 2018. Rescom was appointed and the Works completed on 4 December 2018. Whilst the section 20 consultation process was initiated with the issue to leaseholders of Notice of Intention on 9 November 2018, the Works were complete before the full consultation process could be carried out. There were insufficient reserve funds available to pay for the Works, however Rescom's proposal included accommodation in this respect - Rescom were prepared to carry the debt.
9. The objections to the grant of dispensation by the leaseholders of apartments 304 and 603 are identical. It is contended that the Applicant's description of the Works is inaccurate, that the review of quotes has been ongoing since 2 November 2018, that the Applicant had been told not to use Rescom Limited based on the poor quality of their work on a fire alarm system, that the second quote was only obtained at the resident committee's request, that the Applicant's decision was taken knowing further quotes were being obtained the same day, that the Applicant's claim as to urgency of the Works was undermined by delay and by the residents' views and that the Applicant did not act in the best interests of the residents.
10. The objections included a contention that the total capacity of the new instantaneous water heaters was insufficient. The capacity in the proposal put forward by Rescom as being suitable was linked to 75% usage. In this respect the tribunal noted that 3 heaters of greater capacity, or the installation of a fourth heater, would have required an upgrade to the gas supply resulting in additional cost and delay.
11. The papers indicate that a former leaseholder, Mr Spencer, was very active in challenging the proposal, including calculations on capacity and the choice of system, and undertook some work himself in analysing the costs. Mr Spencer considered the Rescom quote to be excessive. The evidence shows that an alternative quote was in the course of being obtained by residents at the time the Rescom proposal was accepted by the Applicant and the Works instructed. However neither of the Responses include a proposal or quotation from a contractor other than the two contacted by the Applicant or evidence that a third proposal could have been implemented more quickly than the Rescom one. Neither Response includes any specific proposal concerning the funding of the Works if a contractor had been selected that would not carry the debt.
12. Whilst the Application was made over 4 years after the completion of the Works, on the evidence before the tribunal none of the leaseholders have raised any issue with the actual performance of the new system or its reliability, save for a possible issue soon after the heaters were installed in December 2018. However when Rescom attended on site, it was apparently found that all temperatures at all outlets reached 50 degrees in under a minute, so this was a false alarm. No evidence has been submitted that the new system has failed at any point since.

13. Applying the principles in section 20ZA and in *Daejan* the tribunal determines that it was reasonable to dispense with consultation requirements because the Property was without hot water and the full section 20 process would have left the residents in this position for a prolonged period of time. The tribunal therefore turns to the question of whether any relevant prejudice would be suffered as a consequence of the issues raised in the Responses if the tribunal were to grant dispensation unconditionally.
14. The tribunal accepts that there was discontent amongst some of the residents as to the way the issues were handled by the Applicant's representative. However neither Response includes proposals or quotations from a third contractor evidencing that the water heating issues could have been resolved in a reasonable timescale with a more appropriate or cost effective solution. On the evidence before it the tribunal does not accept that the Works are of insufficient capacity or poor quality. On the issue of delay, whilst it is argued by the Respondents that the Works could have been undertaken more quickly than they were, it is also argued that the Applicant instructed the Works too promptly. The tribunal does not consider there to be a basis for compensation on this issue.
15. No costs have been identified by the Respondents incurred as a consequence of any alleged 'relevant prejudice' and the tribunal sees no reason to make an order for costs as a term of granting dispensation.
16. Accordingly, the tribunal makes an unconditional determination under section 20ZA of the Act to dispense with the requirement to consult with the Respondents under section 20 in relation to the Works.
17. The tribunal's decision relates to the section 20ZA application only and the related issues around evidence of prejudice. In the context of section 19 and section 27A of the Act the tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works are of a reasonable standard or whether any service charge that does arise is payable. The tribunal's decision does not include or imply any determination of such matters.

S Moorhouse
Tribunal Judge
20 July 2023

Schedule 1

‘the Works’

The Works were carried out by Rescom Limited and are summarised by the Applicant as follows:

- To attend site and install 3 x 48Kw High Efficiency Instantaneous Condensing water heaters including all associated pipework, modification and electrical works.
- The above plant will be installed in an area of the roof plant room away from the existing hot water units which will be drained / disconnected and left in position.
- This installation will drastically reduce the down time to one day of no hot water, reduce the risk of water contamination as there is no store of hot water and drastically reduce running costs.
- The units have been calculated to more than cope with the current hot water demand.
- All relevant documentation and certification will be handed over on completion of commissioning.

Schedule 2

Extracts from legislation

Landlord and Tenant Act 1985

Section 20

(Subsections (1) and (2):)

(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 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 under the agreement.

Section 20ZA

(Subsection (1))

(1) 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.