



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

**Case reference** : LON/00BK/LDC/2024/0026

**HMCTS code** : P: PAPERREMOTE

**Property** : 10 Montrose Place & 19 Headfort Place,  
London, SW1X 7DU

**Applicant** : Montrose Place Management Ltd

**Representative** : Ms Sarah Riley – James Andrew  
Residential

**Respondent** : Leaseholders of 10 Montrose Place & 19  
Headfort Place

**Type of application** : Application to dispense with statutory  
consultation requirements under  
section 20ZA of the Landlord and  
Tenant Act 1985

**Tribunal members** : Judge Tueje

**Date of decision** : 9<sup>th</sup> May 2024

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of the remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing, and all issues could be determined on paper.

## **Decision of the Tribunal**

*In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.*

- (1) The Tribunal grants unconditional dispensation pursuant to s.20ZA in respect of the upgrade and/or replacement of soon to be obsolete software that controls the Building Management System, and the replacement of a Head End PC and other hardware (the “Works”). These Works will be carried out by Electracom, and cost £31,823.83 including VAT.
- (2) This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or cost of the subject works.

## **The Application**

1. This Application under section 20ZA, is dated 11<sup>th</sup> January 2024, and seeks dispensation from the statutory consultation requirements in respect of the Works required at 10 Montrose Place and 19 Headfort Place, London, SW1X 7DU (the “Property”).

## **Background**

2. The Applicant, is Montrose Place Management Limited, a Residents’ Management Company, which is a party to the leases.
3. The Property was built in around 2006 and is comprised of 4 blocks. Three of the blocks, Blocks A, B and C, are situated at 10 Montrose Place, Block D is situated at 19 Headfort Place. The Property is managed by James Andrew Residential.
4. The Application relates to Blocks A, B and C which are served by a communal heating system. The communal heating system has been maintained by Electracom since the Property was built.
5. A Condition Survey Report prepared by GDM Partnership Building Services Consultants Limited (“GDM”) dated 27<sup>th</sup> June 2023, describes the Works in a little more detail. It states the Control Panels, Controllers and BMS network in all areas should be replaced as soon as possible, and recommends the ground floor BMS Head End and software should be replaced too. GDM also reports that these installations are 2 years beyond their usual life expectancy.
6. In a Capital Expenditure Report dated 7<sup>th</sup> August 2023, again prepared by GDM, a budget of £53,500 plus VAT is recommended for the Works. On 20<sup>th</sup> October 2023, GDM provides a quotation of £13,796.00

excluding VAT to specify what works are required, and to tender and oversee the Works.

7. In an e-mail sent on 1<sup>st</sup> December 2023 to James Andrew Residential by Electracom, the latter confirms it would charge £31,823.83 including VAT to carry out the Works. It advises other repairs and upgrading dealt with in GDM's report should be carried out on a reactive basis as and when repairs are required.
8. On 22<sup>nd</sup> September 2023, the Applicant gave notice of its intention to carry out the Works to leaseholders; the notice of intention expired on 24<sup>th</sup> October 2023. None of the leaseholders nominated contractors.
9. The Applicant's reason for applying for the dispensation is stated in the Tribunal's application form as follows:

*We do not wish to seek quotes from more than one BMS contractor. A consultant that [p]roduced a Capital Expenditure plan has advised that we should budget £53,500 plus VAT and fee to replace the the [sic] BMS system in all areas. The incumbent BMS maintainer, who has looked after the BMS system since the building was built .... is of the opinion that it does not need replacing in all areas and instead spending £31,822 inc. VAT and incurring no professional fees, would get the system fully functioning and would proactively upgrade the software and replace imminently about to fail/non compatible hardware. They advise any other parts can be replaced on a "as fails"/reactive basis. Furthermore we have a quote of £13,796 from a consultant just to specify the BMS upgrade, so we consider the chosen route a more affordable route which also provides a plan for immediate system functionality where obsolete and a long term plan. Importantly this is a route with a contractor[sic] that has over a decade of knowledge of this particular BMS system.*

10. In light of the above, the Applicant has not carried out any further consultation in respect of the Works.
11. Following receipt of the Application, the Tribunal made a directions order dated 12<sup>th</sup> March 2024. Paragraph 2 of the directions order required any leaseholder who objected to the Application to provide their response by 12<sup>th</sup> April 2024. The Applicant notified the Tribunal that none of the leaseholders have objected to the application.

### **The hearing**

12. In making its decision, the Tribunal took into account the information provided by the Applicant by way of an indexed paginated bundle comprising 118 pages, including the following documents:
  - 12.1 The Application for dispensation;
  - 12.2 The Applicant's statement of reasons supporting the Application;
  - 12.3 Electracom's quotations to carry out the Works;
  - 12.4 GDM's reports dated 27<sup>th</sup> June and 7<sup>th</sup> August 2023;

- 12.5 A sample lease; and
- 12.6 The Tribunal's directions order 12<sup>th</sup> March 2024.

### **The Legal Framework**

13. So far as is relevant, section 20 states:

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-*

*(a) complied with in relation to the works or agreement, or*

*(b) except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate 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 payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*

*(3) This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*

14. Section 20ZA(1) continues:

*(1) 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 agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

15. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

15.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.

15.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord's failure to comply with the requirements under section 20.

15.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.

- 15.4 The Tribunal's main focus on such applications is what prejudice, if any, have leaseholders suffered.
- 15.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.
- 15.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.
- 15.7 If appropriate, the Tribunal may grant conditional dispensation.

### **The Tribunal's Decision**

16. The Tribunal reached its decision in this case after considering the documents in the bundle, and taking into account its assessment of that documentation.
17. This determination does not refer to every matter raised, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was relevant to a specific issue, it was considered by the Tribunal.
18. The Tribunal grants unconditional dispensation pursuant to s.20ZA in respect of the upgrade and/or replacement of soon to be obsolete software that controls the Building Management System, and the replacement of a Head End PC and other hardware, which is to be carried out by Electracom, costing £31,823.83 including VAT.

### **The Tribunal's Reasons**

19. The Tribunal has had regard to the nature of the works and finds the Works were necessary in light of GDM's recommendation that the Control Panels, Controllers and BMS network should be replaced as soon as possible, and that the ground floor BMS Head End and software also require replacement. The Tribunal also notes that while the Applicant has not expressly stated the Works are urgent, these installations are 2 years beyond their usual life expectancy.
20. The Tribunal takes into account that leaseholders were given an opportunity to nominate contractors and make observations regarding these works, but there were no nominations, objections, or any other observations from leaseholders.
21. The Tribunal is satisfied that the cost of the works are no more than is necessary because the Applicant has adopted a course of action involving a lesser outlay than the alternative course recommended by GDM.

22. There is no evidence before the Tribunal indicating that the Applicant's failure to comply with the section 20 requirements would affect the extent, quality, and cost of the works to be carried out. The Works will result in a functional BMS, which will be carried out by a contractor familiar with the system.
23. By paragraph 2 of the directions order, the leaseholders were afforded an opportunity to object to this application; they have not done so. Therefore, the Tribunal proceeds on the basis that the leaseholders have no objections to the application, and that there has been nor will be any relevant prejudice to leaseholders, who are likely to have objected to the application if there had been any prejudice.
24. For the reasons stated at paragraph 19 above, the Tribunal is satisfied that the Works are required to the Property. Therefore, the Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements. The Tribunal has borne in mind the Supreme Court decision in *Daejan Investments Limited v Benson and others [2013] UKSC 14*. There is no evidence of any prejudice caused to the leaseholders and indeed none have raised an objection to the application. Dispensation is therefore granted from the consultation requirements.

**Name:** Judge Tueje

**Date:** 9<sup>th</sup> May 2024

### **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).