



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

**Case reference** : **LON/00AY/LDC/2024/0040**

**Property** : **Flats 1-40, Trinity Close, The Pavement,  
London SW4 0JD**

**Applicant** : **Trinity Close Limited**

**Representative** : **Andrew Mundy, Willmotts**

**Respondents** : **The leaseholders of the Property**

**Type of Application** : **Application for the dispensation of  
consultation requirements pursuant to  
S.20ZA of the Landlord and Tenant Act  
1985**

**Tribunal Member** : **Judge Hugh Lumby**

**Venue** : **Paper determination**

**Date of Decision** : **11<sup>th</sup> June 2024**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

## **The background to the application**

1. The Property is a 1930s purpose built block of flats, constructed over six floors with a communal boiler and hot water system for the individual flats.
2. The Applicant is the freeholder of the Property and the Respondents are the leaseholders.
3. The Applicant has applied for dispensation from the statutory consultation requirements in respect of works to install a temporary stand-alone hot water system, including an additional boiler heat exchange and stand-alone hot water tanks. The application was received on 9 February 2024.
4. The Applicant explained that the Property contains a communal hot water system, comprising a communal boiler hot water tank and distribution pipes to all flats. The main boiler has split and is out of service. A temporary boiler was installed but has not worked successfully, only providing sporadic warm water to some flats. The Applicant therefore proposed to install the temporary stand-alone hot water system, including an additional boiler heat exchange and stand-alone hot water tanks, being the works the subject of this application.
5. Two quotations were obtained for the works, one from Cleanheat for £13,352.74 (including VAT) and the second from Birdsall for £49,755.50 (including VAT). The lowest quotation was above the threshold that triggered the need for a consultation with leaseholders pursuant to section 20 of the Landlord and Tenant Act 1985.
6. The Applicant considered the works were urgent as the Property was without hot water from the end of December to the end of January. The Applicant has explained that residents were seeking legal advice and there were concerns about water hygiene with warm not hot water being provided as well as a potential breach of safety standards pursuant to British Standard BS 8580-1; this relates to legionella control. As a result, it decided to proceed with the works without consulting the leaseholders.
7. Cleanheat were instructed on 24 January 2024 to carry out the works which have now been completed.

8. The Tribunal issued Directions dated 28 February 2024 in relation to the conduct of the case. It was decided in those Directions that the application be determined without a hearing, by way of a paper case. No parties have objected to this decision.
9. The Applicant confirmed on 18 April 2024 that all Respondents were each provided with application to the Tribunal for dispensation and the Tribunal's Directions dated 28 February 2024. The Applicant has confirmed that no responses (and so no objections) were received to the application.
10. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
11. This has been a paper determination which has not been objected to by the parties. The documents that were referred to are in a bundle consisting of 30 pages, comprising a letter to the Respondents notifying them of the carrying out of the works and related matters, a specimen lease and copies of the two quotations received. The Tribunal also reviewed the Applicant's application, the Tribunal's Directions dated 28 February 2024, a letter to leaseholders advising them of the application and a list of all leaseholders in the Property.

### **The issues**

12. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made

### **Law**

13. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
14. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these

requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

15. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.

16. Section 20ZA relates to consultation requirements and provides as follows:

*“(1) Where an application is made to a leasehold valuation 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.*

*(2) In section 20 and this section—*

*“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

....

*(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and*

*(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

17. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

18. The Supreme Court came to the following conclusions:

- a. The correct legal test on an application to the Tribunal for dispensation is: “Would the flat owners suffer any relevant

prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

- b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
  - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
  - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:
    - i. what steps they would have taken had the breach not happened and
    - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

### **Consideration**

- 17. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.
- 18. The Tribunal is of the view that, taking into account that there have been no objections from the Respondents, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the installation of the temporary hot water system.
- 19. The Applicant believes that the works were urgent to ensure the supply of hot water to the flats during a cold period and to avoid health and hygiene risks associated with the supply of warm rather than hot water. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.

20. The Tribunal therefore grants the Applicant's application for dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the works the subject of its application.
  
21. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas.

**Name:** Tribunal Judge Lumby      **Date:** 11 June 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).