



FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : CAM/38UD/LDC/2024/0001

Property : Perpetual house, 10 Station Road, Henley on Thames RG9 1AF

Applicant : Perpetual House Residents  
Management Company Limited

Managing Agent : Jordan Jones, Property Manager  
Neil Douglas Block & Estate  
Management Ltd

Respondents : All Leaseholders of Dwellings at the Property

Landlord : Perpetual House Freehold Limited

Type of Application : To dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 pursuant to Section 20ZA

Tribunal : Judge JR Morris

Date of Application : 10<sup>th</sup> January 2024

Date of Directions : 19<sup>th</sup> March 2024

Date of Decision : 30<sup>th</sup> May 2024

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DECISION

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Decision

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).

2. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Respondent Leaseholders and the Landlord.

## Reasons

### The Application

3. The Applicant Management Company seeks dispensation from the section 20 consultation requirements in respect of qualifying works to repair the heating and hot water system serving all apartments at the Property. These included removal and installation of new heat exchangers, and commissioning and testing the boiler. The Applicant stated that the work could not await consultation because the apartments were left without heating and hot water in the winter. The Applicant said the Respondents were informed of the work and its progress in November and December 2023.
4. Directions were issued on 19<sup>th</sup> March 2024 which stated that the Application would be determined on or after 20<sup>th</sup> May 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 19<sup>th</sup> April 2024.
5. No request was received.
6. The Directions required the Applicant to:
  - a) send by 5<sup>th</sup> April 2024 to each of the Respondents and the Landlord, by hand delivery or by first class post and by email, if practicable copies of:
    - i. The application form (without the list of leaseholders' names and addresses);
    - ii. A concise description of the relevant works for which dispensation is sought;
    - iii. The estimate of the cost of the relevant works, including any professional fees and VAT (if possible);
    - iv. Any other evidence relied upon; and
    - v. The directions.
  - b) file with the tribunal confirming that this had been done and stating the dates on which this was done.
7. The Applicant confirmed to the Tribunal the direction had been carried out on 4<sup>th</sup> April 2024.
8. If the Respondent Leaseholders or Landlord opposed the Application, they were to send a completed Reply Form which was attached to the Directions to the Tribunal with a copy to the Applicant together with a statement and evidence of their objections by 19<sup>th</sup> April 2024.
9. No objections were received.

10. The Applicant provided a bundle to the Tribunal which included:
  - A statement of reasons for the Application with appendices:
    1. Quotation from Compass Boiler Services dated 10<sup>th</sup> November 2023
    2. Email from Compass Boiler Services dated 29<sup>th</sup> November 2023 regarding inability to carry out work due to contractor's health issues
    3. Advanced Maintenance Quotation dated 18<sup>th</sup> December 2023
    4. E mails to Respondent Leaseholders
    5. Advanced Maintenance Invoice dated 12<sup>th</sup> January 2024
  - The Application Form
  - Directions
  - A copy of a Lease
11. The Lease contains the following provisions.
  - The "Development" is defined as comprising Title Number ON38874.
  - The "Maintained Property" is defined as those parts of the Development described in the Second Schedule to the Lease and the maintenance of which are the responsibility of the Management Company.
  - Under the Second Schedule the Maintained Property includes "Service Installations" which are defined as including "pipes pumps boilers...apparatus for the supply of water."
  - The Maintenance Expenses are defined as the moneys expended by the Management Company in carrying out the obligations specified in the Sixth Schedule which include (at paragraph Part B 3) the Service Installations.
  - Under the Eighth Schedule the Tenants covenant to pay to the Management Company the "Tenant's Proportion" which is defined as the proportion of the Maintenance Expenses in accordance with the Seventh Schedule.
12. Therefore, under the Lease, the Management Company is responsible for the maintenance, repair and renewal of the boiler and the Tenants are each liable for a proportion of the costs incurred for the maintenance, repair, and renewal of the boilers.
13. The Applicant provided a description of the works and an explanation as to why they were necessary and urgent in Application and a written statement from the Property Manager, Jordan Jones. These are summarised as follows:
14. The Property has a common boiler system made up of two boiler sets (left hand & right hand) which provide heating and hot water to the Apartments. Each boiler comprises one master heat exchanger and one slave.
15. A leak in the plant room was identified on 9<sup>th</sup> November 2023 caused by the master boiler heat exchanger on the left-hand boiler splitting and water pouring

out of the condensed trap. This resulted in the Respondent Leaseholders experiencing a lack of heating and hot water.

16. Copies of emails were provided between Compass Boiler Services Ltd and Jordan Jones showing that the contractor was called out on 9<sup>th</sup> November 2023 to carry out emergency repair work which was identified as one of the heat exchangers as having split and a quotation (referred to below) was given for its replacement. The contractor was called out again on 10<sup>th</sup> November 2023 when in an email at 10:57 p.m. the contractor indicated that although the other heat exchanger might for the time being be kept working it would probably need replacing. On 29<sup>th</sup> November 2023 Compass Boiler Services Ltd advised that they could no longer honour their quote or undertake the works for medical reasons.
17. Advanced Maintenance UK Ltd were asked for a quotation, initially for one heat exchanger but subsequently re-issued their quotation to include both heat exchangers in the left-hand boiler as it was considered that both would need to be replaced.
18. The Two quotes obtained were:
  - Compass Boiler Services Ltd for £12,800.00 plus VAT to replace one heat exchanger.
  - Advanced Maintenance UK Ltd for £27,956 plus VAT to replace both heat exchangers.Both contractors held the relevant qualifications and accreditations to carry out the works.
19. The works to be carried out by Advanced Maintenance UK Ltd were set out in the quotation as:
  - Isolate the left-hand boiler, remove flue, and disconnect electrical, gas and water supplies and dismantle.
  - Drain and remove the existing 2 heat exchangers in the left-hand boiler and dispose of offsite.
  - Supply and install 2 new 280Kw heat exchangers into the boiler.
  - Reconnect the electrical, water and gas supplies and test.
  - Reconnect flue system.
  - Commission and test the boiler and leave site clean and tidy on completion.
20. The works carried out and the invoice was for a total of £33,547.20 being £27,956 plus VAT of £5,591.20.
21. The Applicant said that the quoted costs for the works exceeded the threshold of £250.00 per Apartment and therefore a Section 20 consultation would be required. However, due to this occurring in Winter and the required works left Apartments without heating and hot water, the Applicant felt waiting the 60 of more days to consult under Section 20 of the Landlord & Tenant Act 1985 was

not a viable option. Therefore, Advanced Maintenance UK Ltd were instructed on 8th December 2023 to carry out the qualifying works and an application for dispensation was submitted to the Tribunal concurrently.

22. There was a procurement time for the parts needed, however, the works were completed around 29<sup>th</sup> January 2024 and the heating and hot water was reinstated to the Apartments.
23. The Applicant submitted that the Respondent Leaseholders had not been prejudiced as alternate quotes were sourced to the extent that was possible and the matter was communicated to Respondent Leaseholders on 10<sup>th</sup> November 2023, 6<sup>th</sup> December 2023, and 22<sup>nd</sup> December 2023.
24. The email of 10<sup>th</sup> November 2023 (in summary) informed the Respondent Leaseholders that the heat exchanger in one of the boilers had a serious leak and a replacement heat exchanger was being sought urgently. This meant half the system was out of service. It was added that although the remaining system was operational there had been reports of Leaseholders having intermittent heating and hot water.
25. The email of 6<sup>th</sup> December 2023 (in summary) informed the Respondent Leaseholders that the new heat exchangers had been ordered and installation was scheduled for January.
26. The email of 22<sup>nd</sup> December reporting that the new heat exchangers for the out of service boiler had been delivered and were scheduled to be fitted between 27<sup>th</sup> and 29<sup>th</sup> December.

## The Law

27. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
28. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
29. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

## Determination

30. In determining whether dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that "*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*".
31. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:  
*Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]*
32. The Tribunal noted the emails from the Compass Boiler Services Ltd as to the problem with the heating and hot water system. It was clear it was not advisable to rely on the one (right hand) boiler set. Whereas Compass Boiler Services Ltd had quoted for one heat exchanger for the left-hand boiler set after its visit on 9<sup>th</sup> November, it was apparent from the email in the evening of 10<sup>th</sup> November following the visit earlier in the day, that both heat exchangers in the left-hand boiler set would need replacing. This was confirmed by Advanced Maintenance UK Ltd.
33. On looking at the quotations Compass Boiler Services Ltd quoted £12,800.00 for one heat exchanger and Advanced Maintenance UK Ltd quoted £27,956 for two. This is about 9% more than Compass Boiler Services Ltd might have charged for two if the charge for one is doubled. Whether or not either amount is reasonable is not a matter for this Tribunal but they are both within the same general area of cost. In the Tribunal's knowledge and experience there is a limited pool of heating contractors who can install and maintain common heating systems. The Tribunal therefore finds that the Respondent Leaseholders were not prejudiced by the selection of contractors.
34. Considering the time of year when the boiler failed and the impact that a complete breakdown would have, the Tribunal found that the work was urgent and warranted the replacement of the heat exchangers and reinstatement of the full heating system as soon as possible.
35. The Tribunal also found that the Respondent Leaseholders had been kept informed and would have been aware of the urgency of the situation. These proceedings have given Respondent Leaseholders an opportunity to show any prejudice by the lack of consultation by evidence that the work was not urgent or identifying an alternative contractor. The Tribunal has not received any such representations.

36. Therefore, in the absence of any evidence to the contrary the Tribunal determined that the Respondent Leaseholders were not prejudiced in this instance by the failure to carry out the consultation procedure.
37. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
38. Respondent Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.
39. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Respondent Leaseholders and the Landlord.

Judge JR Morris

#### ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

## ANNEX 2 - THE LAW

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—  
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
- (4) to (7)... not relevant to this application.