FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00MR/LDC/2024/0100
Property	:	Flats 18-24 Cardigan House, Kent Street, Portsmouth, PO1 3FE
Applicant	:	Freehold Manager (Nominees) Ltd
Representative	:	Premier Estates Ltd
Respondents	:	Mr Kam Hung Lam - Flat 18 Southern Housing Group Ltd – Flats 19 to 24
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	:	Mrs J Coupe FRICS - Regional Surveyor
Type of Determination	:	Determination on papers
Date of Decision	:	31 July 2024

DECISION

The Application

1. The Applicant seeks retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 11 June 2024.

2. The property is described by the Applicant as a block of flats within the Citigait development which are owned by the Southern Housing Group (Housing Association). Flat 18 is said to be the only flat which has been staircased to full ownership.

3. The Applicant states that:

> "All four boilers in the plant room at this block have come to end of life and condemned. We have received a quote from our appointed gas engineers who service the equipment to replace the four domestic boilers, with two commercial ones, which is more fit for purpose. At present, residents do not have access to any hot water or heating unless they use their immesion heaters (back-up option) within their flats. However, the majority of the residents were not aware that this exists within their flats and have therefore not serviced the equipment, which as a result now does not work. The boiler replacement works started yesterday 10/06/24.
>
> And further
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> . . . several residents are without hot water and heating due to the failures of the communal boilers system. Heating is not a crucial at this time given the warm weather; however, hot water is also impacted and it is therefore imperative that we install the new boilers at the earliest. There are vulnerable residents within the block who require hot water regularly throughout the day.

4. The application was accompanied by a copy of a Counterpart Lease dated 31st March 2008 for Apartment 40 Citigait between BDW Trading Limited (trading as Barratt Homes) (1) and Southern Housing Group Ltd (2). The Applicant states that the leases are all in common form.

5. A quote from Hopkins (Mechanic & Electrical Engineers) dated 24 May 2024 in the sum of £24,900 ex VAT to effect the replacement of the three existing boilers with two new Ideal Evomax 2 30kw boilers and associated works was provided.

6. On 17 June 2024 the Tribunal directed that the application would be determined on the papers without a hearing unless a party objected in writing within 7 days. No objections were received.

7. The Directions stated that neither the question of reasonableness of the works, nor of the costs incurred, were included in the application, the sole purpose of which is to seek dispensation.

8. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 27 June 2024 indicating whether they agreed or disagreed with the application. No completed forms have been received by the Tribunal. Furthermore, the Applicant has not notified the Tribunal of any objections to the application.

Determination

9. In the first instance the Tribunal reviewed the application and considered whether it remained suitable for determination on the papers.

10. The Tribunal finds that there is no substantive dispute on the facts and no objections to the application have been received from the lessees. The application solely concerns whether or not it is reasonable to dispense with the statutory consultation requirements. Accordingly, the Tribunal finds that the matter remains capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.

11. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

12. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

13. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

14. Lord Neuberger in *Daejan* said at paragraph 44

> "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 s 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".

15. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

16. The Tribunal now turns to the facts.

17. The Tribunal is satisfied that the works for which dispensation is sought, that being the replacement of failed communal boilers providing hot water and heating to residents, was necessary.

18. The Tribunal takes account of the fact that none of the lessees submitted any objection to the application.

19. Furthermore, the Tribunal finds that no prejudice as a result of the failure to consult has either been demonstrated or asserted.

20. On the evidence before it the Tribunal is therefore satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

Decision

21. **The Tribunal grants an order retrospectively dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of the replacement of failed communal boilers, as identified in the application.**

22. **The Applicant is to provide a copy of this decision to all leaseholders.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.