



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

Case Reference : **MAN/00BY/LDC/2024/0053**

Property : **Bridpoint Apartments, 35 Bridport Street,
Liverpool L3 5QF**

Applicant : **Bridpoint Apartments RTM Company
Limited**

Applicant's Representative : **Mr Nick Weiss of South London Estate Ltd**

Respondent : **Various Leaseholders (see Annex)**

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

Tribunal Members : **Mr John Murray LLB**

Date of Order : **1 October 2024**

ORDER

DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made on 22 July 2024 by Mr. Nick Weiss of South London Estate Ltd, managing agents on behalf of Bridpoint Apartments RTM Company Limited for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Requirements") relating to two a contract for major works at Bridpoint Apartments, 35 Bridport Street, Liverpool L3 5QF ("the Property"). The Property appears to comprise of 28 apartments, two commercial units and an office.
2. The Applicant stated that the qualifying works involved the installation of 3 x Worcester 800 heat only 50kw boilers to replace the existing failed communal boiler systems. The managing agents had been instructed by the Applicant to facilitate the works which were essential to restore hot water and heating to flats in the Property.
3. The Applicant explained that informal notifications had been issued to all leaseholders and regular updates, meetings, and detailed explanations of issues and proposed solution. Temporary solutions had been put in place, but were not a substitute for a working boiler. Five estimates for the works had been obtained in the sums of
 - (a) £12,183.81
 - (b) £27,479 (plus VAT)
 - (c) £26,604.00
 - (d) £30,323.90
 - (e) £35,551.54
4. Residents at the Property had understandably been complaining about the lack of heating. Liverpool City Council had served an Abatement notice on the Applicant on the 22nd July under s80 Environmental Protection Act 1990 in respect of a Statutory Nuisance.
5. Directions were made by a Legal Officer of the Tribunal on the 7 August 2024. The Applicant was directed to send a complete copy of its case to each Respondent within 14 days of the date of the directions (21 August 2024) and to confirm to the Tribunal it had done so. The Applicant's Managing Agent confirmed on the 27th August he had sent the case by way of a bundle of documents to the Respondents on the 9th August 2024 by email.

6. Any party who opposed the application were invited to submit a statement in response to the Tribunal within 21 days of receipt of the Applicant's case above (30 August 2024). No Respondents submitted any statements in response.
7. Any party wishing to make representations at an oral hearing before the Tribunal were to inform the Tribunal office in writing within 42 days of the date of the directions (18 September 2024). No such representations were received.
8. The Tribunal stated its aim to determine the matter in or shortly after the week commencing 30 September 2024 by a determination on the papers. There was to be no inspection unless the Tribunal considered one was necessary at a later date.

THE LEGISLATION

28. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

- (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 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 —
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (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.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

THE DETERMINATION

9. The Tribunal has jurisdiction to dispense with consultation under Section 20ZA (1) which provides the Tribunal may do so where “*if satisfied that it is reasonable to dispense with the requirements*”.
10. The only issue for the Tribunal to consider under section 20ZA is whether or not it is reasonable to dispense with the consultation requirements. The application does not concern the issue of whether any service charge costs resulting from the contracts are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 of the Act, if, for example they did not believe the Applicant was entitled to charge for utilities under the terms of their occupancy agreement.
11. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of **Auger v Camden LBC [2008]**. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise
12. Dispensation was considered in depth by the Supreme Court in **Daejan v Benson [2013] UKSC14** which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
13. At paragraph 56 Lord Neuberger said it was “clear” that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work. In such cases it

would be “odd” if the (LVT) could not dispense with the Requirements on terms which required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.

14. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.
15. The Tribunal is satisfied that the works were urgently required given the nature of the problem, the interference with quiet enjoyment, and health and safety of the residents, and the intervention of the Local Authority. The Applicant is a Right to Manage Company acting on behalf of the Respondents in any event.
16. The Applicant had obtained five estimates for the works with a view to achieving the best prices for the people ultimately paying the costs; the consultation process itself would be more likely to prejudice the payees as the would be left without space and water heating for a longer period and possibly enforcement action by the Local Authority.
17. The Tribunal notes that no representations have been received from any of the Respondents, who presumably share the Applicant's aim of restoring the heating system as quickly as possible.
18. Dispensation from consultation is granted.
19. This judgement does not address whether the costs are either payable, under the terms of the lease, or reasonable in terms of amount and quality of works, and any leaseholder who has concerns in any of those respects has a right to apply to the Tribunal pursuant to s27A Landlord and Tenant Act 1985.

Tribunal Judge J Murray LLB
1 October 2024

Annex A
Leaseholders

Mr Jacky Chan & Ms Yuki Tam
Mr Austin Lei & Ms Joey Mo
Mr Dennis Chan & Ms Queenie Chan
Mr LI SAI CHUNG (SAI CHUNG LI)
Miss Rita Fung
Ms Kathy Wong
Ms Jenny Lau
Mr Alan Hon & Ms Marina Lee
Ms Sofia Lam
Mr Alex Shiu
Mr Trevor Walter Haddon
Ms Tiffany Ng
Mr Mark Thompson / Abrason Ltd
FAY CORPORATION LTD
Ms Maria But (BUT YIN PING) & Mr Colin Tse
Mr YC Chan & Ms Greenie Leung
Dr Nelson Koo
Ms Sophia Ip
Ms Brenda Lai & Mr Patrick Chan
Mr William Masi
Ms Queenie Siu
Mr Mark Thompson / Abrason Ltd
Mr Peter Lo
Dr Robert Andrew Ennis Richardson
Ms Annie Wong and Mr Fergus Kam (MS WONG LAI KUEN)
Mr Frankie Ma
Ms Nicola Cirillo
Mr Andy Cheng
Mr Jonathan Miles Cockram / Silver Fern Design Ltd