



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

**Case Reference** : **BIR/00FY/LDG/2024/0004**

**Property** : **Clarendon House, 17-19 Clarendon Street,  
Nottingham, NG1 5HR**

**Applicant** : **Clarendon House (Nottingham)  
Management Company Limited**

**Representative** : **Mapperley Property Management Limited**

**Respondents** : **The leaseholders of Clarendon House**

**Type of Application** : **An application under section 20ZA of the  
Landlord and Tenant Act 1985 for  
dispensation of the consultation  
requirements in respect of qualifying  
works**

**Tribunal Member** : **Judge M K Gandham**

**Date and venue of  
Hearing** : **Paper Determination**

**Date of Decision** : **26 July 2024**

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**DECISION**

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## **Decision**

1. The Tribunal determines that it is reasonable to dispense with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in relation to the boiler works referred to in the Applicant's application.

## **Reasons for Decision**

### **Introduction**

2. By an Application received by the Tribunal on 1 February 2024, Clarendon House (Nottingham) Management Company Limited ('the Applicant'), applied to the First-tier Tribunal, Property Chamber under section 20ZA of the Landlord and Tenant Act 1985 (the 'Act') for a determination to dispense with the consultation requirements of section 20 of the Act in respect of, what they described as, "*Urgent boiler works required that supply the communal area and all flats*".
3. The Applicant is the residents' management company of Clarendon House, 17-19 Clarendon Street, Nottingham, NG1 5HR ('the Property'). The Respondents to the application are the long leaseholders of the flats comprised in the Property, whose names are detailed in the schedule hereto.
4. The Property comprises a building containing thirteen flats, with parking, gardens and grounds, located on Clarendon Street in Nottingham.
5. The Tribunal issued directions on 15 February 2024 and, due to a change in the Applicant's representative, issued further directions on 2 May 2024. The directions required the Applicant to forward to each of the Respondents a copy of the application, a statement explaining the purpose of the application (together with any supporting documentation) and a copy of the directions order. The Respondents were given until 7 June 2024 to object to the Application.
6. On 16 May 2024, the Tribunal received a copy of the Applicant's statement, together with three quotes that had already been obtained from MEIS Facilities Management (for the repair of the current heating and hot water system) and from T&S Heating and GP Heating (for replacement of the current system). The Applicant also confirmed that directions with regard to the service of documentation on the Respondents had been complied with.
7. The Tribunal received a single response from a Respondent – Elizabeth Summers of 6 Clarendon House – who confirmed that she supported the application and did not require an oral hearing.
8. The Tribunal did not inspect the property.

9. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements, under section 20ZA of the Act. **This Application does not concern the issue of whether any service charge costs are reasonable or payable and, therefore, the Respondents will continue to enjoy the protection of section 27A of the Act.**

### **Grounds for the Application**

10. The Applicant's statement, which took the form of a letter from Mr Christopher Williams of Mapperley Property Management Limited ('the Applicant's Representative') to the Respondents, contended that the heating and hot water system in the cellar – which serviced all of the flats and communal areas – was in need of urgent repair.
11. Mr Williams stated that the current boilers were over twenty years old, meaning that they were coming to the end of their life expectancy. He referred to them as not being easy to repair within a reasonable amount of time, as the parts were becoming increasingly difficult to obtain. In addition, he stated that the current heating and hot water system was only working at 50% capacity, as only one of the boilers worked, causing the remaining boiler to work harder than designed which would lead to premature failures.
12. Mr Williams stated that newer condensing boilers were far more efficient, that the usage would likely halve and that bills would be lowered. He stated that, as the existing boilers would need replacing in the next few years, repairing the boilers would be a "*waste of Leaseholder money*" and that one of the quotes obtained to repair the boilers was close to the cost of replacing the system in any event.
13. The three quotes obtained were as follows:
- MIES Facilities Management (for the repair of the current system) - £20,547.05 (plus VAT);
  - T&S Heating Ltd (for replacement of the current system) - £45,681.11 (plus VAT); and
  - GP Heating (for replacement of the current system) - £27,860.00 (plus VAT).
14. As the works were considered urgent and the costs of the works would exceed the threshold of £250.00 for qualifying works under the Act, the Applicant made an application to the Tribunal to dispense with the requirements under section 20 of the Act. Mr Williams confirmed that the works had not yet been started and that they proposed to use GP Heating to carry out the same.

### **The Law**

15. Section 18 of the Act defines what is meant by the term 'service charge' and defines the expression for 'relevant costs'. Section 19 of the Act limits the

amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred.

16. Section 20 details consultation requirements and section 20(1) provides:

*Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either—*

- (a) complied with in relation to the works or agreement, or*
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works unless certain consultation requirements have been either complied with or dispensed with by First-tier Tribunal (Property Chamber).

17. The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These, amongst other things, require the landlord to serve on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants' observations. There is also a duty on the landlord to seek estimates from any contractor nominated by or on behalf of tenants. The requirements also detail the procedure for the preparation and delivery of the landlord's proposals.

18. Section 20ZA of the Act provides:

*(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...*

### **The Tribunal's Deliberations**

19. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the section 20 consultation requirements required under the Act.
20. Section 20ZA confirms that a tribunal may make a determination to dispense with all or any of the consultation requirements, if it is satisfied that it is “reasonable” to dispense with the same.

21. The leading authority for the way in which the Tribunal should approach this question was considered in the decision of the Supreme Court in *Daejan Investment Limited v Benson et al* [2013] UKSC 14, which determined (amongst other things) that the correct approach was to consider the extent to which the tenants might be prejudiced by a lack of consultation.
22. In considering that issue, the legal burden of proof rests with the applicant, but the factual burden of identifying some relevant prejudice rests with the respondent. Relevant prejudice refers to a disadvantage that the respondent would not have suffered had the consultation requirements been fully complied with.
23. The Tribunal noted that the Applicant had asked for dispensation due to repair works to the boilers, which serviced both the communal areas and the flats, being “urgent”. The Applicant had already obtained three quotes, one for repairing the system and two for replacement, and was proposing to instruct GP Heating (the provider of the lower quote for replacement) to replace the existing boilers, due to their age and potential need for replacement in the near future.
24. The principal focus for the Tribunal’s consideration was the extent, if any, to which the Respondents were likely to be prejudiced by the failure of the Applicant to comply with the consultation requirements.
25. In this regard, only one of the Respondents had provided a response to the Tribunal – supporting the application - and none of the Respondents had raised any objections.
26. Accordingly, the Tribunal considers it is reasonable to dispense with the consultation requirements in this matter.

## **Appeal**

27. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham

## **Schedule**

Ms Lisa Williams - 1 Clarendon House  
Miss Erin Reilly - 2 Clarendon House  
Mr Irfan Miana - 3 Clarendon House  
Mr Stephen Pratt & Ms Emilie Whelan - 4 Clarendon House  
Mr Luke Wells & Mrs Karen Wells - 5 Clarendon House  
Ms Elizabeth Summers - 6 Clarendon House  
Mr Stuart Pratt - 7 Clarendon House  
Mr On Kwong Pang - 8 Clarendon House  
Ms Linda Moore - 9 Clarendon House  
Mr Diwei He - 10 Clarendon House  
Hosking & Corrigan Property Limited - 11 Clarendon House  
Mr Daniel Colin Hailstone - 12 Clarendon House  
Mr Stuart Pratt - Penthouse Clarendon House