



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : **LON/00BK/LDC/2025/0620**

Applicant : **Fitzroy Place Management Co. Ltd**

Representative : **Rendall and Ritner**

Respondents : **The Leaseholders of the 86 flats listed in the application.**

Property : **Fitzroy Place, 1 Nassau Street 3&4
Pearson Square London W1t**

Tribunal : **Judge N O'Brien**

Date of determination : **25 April 2025**

DECISION

Decision of the tribunal

1. The Tribunal grants the application for dispensation from the statutory consultation requirements in respect of the subject works namely repairs to equipment installed in the property which monitors and records the Respondents' use of the heating and cooling system in their respective flats.

The Application

2. By an application notice dated 14 January 2025 the Applicant's managing agents applied on behalf of the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (LTA 1985) for dispensation from the statutory consultation requirements in respect of repair works to Fitzroy Place. Fitzroy Place is a purpose-built block consisting of 2 commercial units, 54 affordable residential units and 235 private residential units. The application only concerns 86 of the apartments within the block included on the list attached to the application. The Respondents are the leasehold owners of those residential units. The Applicant seeks dispensation in relation to the cost of repairs to the wiring of the installation which monitors the lessees' consumption in respect of

the heating and air conditioning systems which serve the affected flats. The Applicant is unable to comply with the requirement that it serve 2 estimates as part of the s.20 consultation process because the system which has been installed is a 'closed protocol' system which means that only its contractor, Skanska, can carry out the necessary repairs, as only it can access the required software.

3. In the application notice the Applicant states that it cannot assess the lessees consumption and properly bill them for their consumption until the repairs are carried out.
4. By directions dated 19 February 2025 the Tribunal directed that the Applicant should, by 10 March 2025, send to the leaseholders and the residential sub-lessees and any recognised tenants association the application, and a brief statement explaining the reasons for the application if not already contained in the application, and the directions, by email or post and affix them to a prominent place in the common parts of the property.
5. By email dated 27 February 2025 the Applicant's managing agent confirmed by email that she had served the required documentation. In response to a query raised by the tribunal she further confirmed by email on 24 April that the required documentation was sent to each leaseholder by email or post, and that copies had been displayed in the residents' lounge on 27 February 2025 and sent to the residents association.
6. The directions provided that if any leaseholder or sublessee objected to the application, he or she should inform the Applicant and the Tribunal by 24 March 2025 with any reply by the Respondent to be filed and served by 31 March 2025. The Tribunal did not receive any objections to the Application.
7. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. Neither the Applicant nor any of the respondents have requested a hearing.
8. **This determination relates to the works described in the application. It does not relate to whether or not the cost of the works was payable, reasonable or reasonably incurred.**

Legal Framework

7. The Service Charges (Consultation Requirements) (England) Regulations 2003 set out the consultation process which a landlord must follow in respect of works which will result in any leaseholder contributing more than £250 towards the cost. In summary they require the Landlord to follow a three-stage process before commencing the works. Firstly the Landlord must send each leaseholder a notice (usually referred to as a stage 1 notice) of intention to carry out the works and

give the leaseholders 30 days to respond. Then the Landlord must supply the leaseholders with a statement with least two estimates for the carrying out of the proposed works, and permit a further 30-day period for observations. Then, if the landlord does not contract with a contractor nominated by the leaseholders or does not contract with the contractor who has supplied the lowest estimate, it must serve a further notice explaining why.

8. Section 20ZA of the LTA 1985 provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with any or all 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”.

9. In *Dejan Investments Ltd v Benson and others* [2013] UKSC 14 the Supreme Court held that in any application for dispensation under s20ZA of LTA 1985 the Tribunal should focus on the extent, if any, to which the leaseholders are or would be prejudiced by either paying for inappropriate works or paying more than would be reasonable as a result of the failure by the landlord to comply with the Regulations. The gravity of the landlord's failing or the reasonableness of its actions are only relevant insofar as they are shown to have caused such prejudice. The evidential burden of identifying relevant prejudice lies on the tenants but once they have raised a credible case of prejudice, the burden is then on the landlord/applicant to rebut it.

The Decision

10. The Tribunal determines that it will grant the dispensation sought. The total cost of the works, according to the estimate included in the bundle, is £6618.60. It is not clear what the cost to each of the affected leaseholders might be and it is not clear in particular whether the cost in respect of all or any of the affected flats will exceed the £250 limit. However the tribunal will proceed on the assumption that it may do in respect of some of them, given that the flats vary significantly in size. The tribunal is satisfied that it will not be possible for the Applicant to supply two comparable estimates as required by the regulations. Consequently it will not be possible for the Applicant to comply with the second stage of the consultation process. The tribunal will grant the dispensation sought, given that only one contractor is in a position to carry out the works and the cost to each leaseholder is on any view limited.
11. This determination does not affect the rights of the leaseholders to apply for a determination under s27A of the LTA 1985 in respect of the cost of the works, or the cost of these proceedings, save as to the question of compliance with the consultation requirements.

12. The Applicant is reminded that, as stated in paragraph 8 of the directions, it is the responsibility of the Applicant to serve a copy of this decision on all the affected lessees.

Name: Judge N O'Brien

Date: 25 April 2025

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).