



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

Case reference : **LON/00AA/LDC/2024/0251**

Property : **(The Heron) Milton Court, Moor Lane,
London, EC2Y 9BN**

Applicant : **Abacus Land 1 (Hold Co 1) Ltd**

Representative : **JB Leitch Limited
(Lauren Walker)**

Respondent : **Leaseholders of the residential
apartments within the Premises**

Representative : **None**

Type of application : **To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant Act
1985**

Tribunal members : **Judge Sarah McKeown
Mr. A. Fonka MCIEH CEnvH MSc**

Date of decision : **20 January 2025**

DECISION

This has been a remote hearing on the papers. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the Tribunal was referred are in an electronic bundle of 254 pages, the contents of which the Tribunal has noted. The decision made is as set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from statutory consultation in respect of works to replace a failed joint pack, which occurred within a busbar inside the Premises as detailed within the application and contained within the invoices p.177-195 of the bundle.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or cost of the qualifying long-term agreement.

The Applicant must serve a copy of this decision on all Respondents and on the Head of the Resident's Association and to place a copy of this decision on the Residents' Portal and display a copy of this decision in a prominent place in the common parts of the Building in which the Respondent's properties are situate within 14 days of receipt of this decision.

The Application

References are to page numbers in the bundle provided for the hearing.

1. The Heron Residences LLP had applied for dispensation from the statutory consultation requirements pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act"). The Applicant was substituted as Applicant in the amended directions of 29 October 2024 (p.1). The Respondents are the leaseholders of the residential apartments within the Premises.
2. The application (p.7) is in respect of (The Heron), Milton Court, Moor Lane, London, EC2Y 9BN ("the Premises"), which is a 36-storey high rise, purpose-built residential block, containing commercial units and the Guildhall School of Music and Drama on the ground and lower floors. The apartments located within the Premises are subject to long residential leases (there are 285 residential apartments). The application relates to works to replace a failed joint pack, which occurred within a busbar inside the Premises. A temporary fix was put in place to restore electricity supplies to all the residence homes and

find a long-term solution. The application is a retrospective application and it is said that the total cost of the works amounts to £68,734.45 (a breakdown of the costs are outlined in the statement of case (p.17) attached to the application).

3. The Applicant has said that it had liaised with the Residents Association via its managing agent Rendall and Rittner who had confirmed its agreement to the dispensation of the consultation requirements in respect of these works. The application was said to be urgent because the failed electrical busbar caused a power outage which impacted all the residential apartments in the Premises and therefore emergency works were necessary to remedy this problem temporarily and permanently.
4. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works or enter into a qualifying long-term agreement which would result in the contribution of any tenant being more than £250. The cost which is the subject of the application exceeds this threshold.
5. By directions dated 10 October 2024 and amended on 29 October 2024 ('the directions' – p.1) the Tribunal directed that the Applicant had to send to each of the leaseholders (and any residential sublessees and any recognised residents' associations), by 11 November 2024, by email, hand delivery or first-class post:
 - (a) Copies of the application form (along with a brief statement to explain the reasons for the application if not already detailed in the application form);
 - (b) The directions.
6. The Applicant also had to display a copy of the directions in a prominent place in the common parts of the Property. On 13 November 2024 (p.248) the Applicant confirmed that it had complied with the order.
7. The directions provided that leaseholders (and sublessees) who oppose the application had to, by 25 November 2024, complete the reply form and sent to the Applicant and the Tribunal and sent to the Applicant a statement in response with copies of any documents they wished to rely upon. There was also provision for a response from the Applicant.
8. The Tribunal has not received a completed form from any leaseholder or sublessee (p.250).
9. The directions provided that the Tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The Applicant's case

10. The Applicant is the head leasehold proprietor of the Premises. Its head leasehold ownership is subject to the terms of a head lease dated 9 July 2009 between (1) The Mayor and Commonalty and Citizens of the City of London, (2) The Heron Residences LLIP and (3) Heron International Holdings (p.31). At the time the application was made, the registered head leaseholder of the Premises was The Heron Residences LLP (p.78), but the Applicant was the equitable head leasehold owner pursuant to a transfer dated 14 August 2023 (p.111) between (1) The Heron Residences LLP and (2) Abacus Land 1 (Holdco 1) Limited. The latter had made an application to register its interest at the Land Registry.
11. All of the apartments located in the Premises were granted on similar terms, and a sample lease was attached to the Statement of Case (p.125).
12. Under the terms of the leases (cl. 3, para. 12-13 of the Fourth Schedule), the Applicant is entitled to demand service charges. The Applicant covenanted to provide the services under the terms of the leases, which included keeping in good repair and decorative condition the communal service media serving the Building and the Estate and the Common Parts (para. 3 of the Sixth Schedule). The leases define the following:
 - “Building” – the building forming part of the Estate within which the Apartment is located
 - “Common Parts”:
 - (a) the accessways forecourts roadways pathways pavements landscaped areas grounds and bin store areas (if any) forming part of the Estate intended for the communal use by the Tenant with other occupiers of the Estate;
 - (b) the entranceways hallways landings lifts staircases passageways and bin store areas (if any) forming part of the Building intended for the communal use by the Tenant with other occupiers of the Building
 - (c) any other part or parts of the Building and the Estate as are from time to time intended for the communal use by the Tenant with other lessees and occupiers thereof.
 - “Estate” – the land and property situate at and known as The Heron, Milton Court, London, EC2 registered with leasehold title number EGL557954
 - “Service Media” – pipes wires conduits drains gullies ducts sewers and other conducting media for the passage of services to and from the Estate
13. The Statement of Case confirms that on 19 July 2023, the concierge of the premises received telephone calls confirming that the apartments within the Premises had lost power. The Fire Brigade attended and they confirmed that what had occurred was an electrical matter. Upon inspection of the battery room, it was discovered that water ingress in the slab above the busbar had caused a catastrophic failure of a joint pack within a busbar feeding the residential apartments. Once the fault was located, Rendall and Rittner instructed its in-house contractor (Jaguar Building Services) to attend. UK Power Networks also attended and worked with the contractor to confirm and prove that the circuit to the busbar was no longer operational, causing the power outage. The Applicant decided to use emergency generator cables to link the junction box to the undamaged busbar section, but power was not restored

until midnight that night. The managing agent provided an incident report (p.159).

14. The contractor prepared an engineers' report (p.167) of the electric failures. In summary this finds:
 - (a) On 19 July 2023, the failure of a joint pack within the busbar occurred and a cables temporary supply solution was installed to restore supplies;
 - (b) On 20 July 2023, a thermal imaging survey of the temporary installation was carried out and all recorded temperatures from this were acceptable for the load being drawn at the time. A fluke 435 power quality analyser was connected to the supply to allow easy monitoring and assessment of the connection load;
 - (c) Jaguar Building Services had discussed possible remediation with the manufacturer;
 - (d) A busbar survey ought to be completed;
 - (e) It was recommended that a thermal imaging and an ultrasound survey was carried out;
 - (f) The most likely cause of the failure was long term gradual water ingress into the joint pack but it was possible the cause could have been "tin whiskers" forming on the joint connection, causing a short circuit fault;
 - (g) Arrangements were being made to survey the possibility of removing the failed point and the adjoining lengths of the busbar. If water ingress could not be determined as the root cause, it would be beneficial to send the failed section for electrical failure forensic analysis.
15. The contractor also provided a survey report after the event (p.174) which confirmed that on 14 September 2023, the defective busbar was removed and the surrounding area surveyed. Water staining/limescale was observed on the joining lap between two of the drip trays installed above the failed sections of the busbar and it was likely that the water ingress had entered the busbar joint and eventually caused a short circuit fault.
16. The Applicant took steps to restore electricity and to remedy the issue on a long-term basis by carrying out the works set out at paragraph 16 of the Statement of Case (p.22). Invoices were provided (p.177-195).
17. The leaseholders were not consulted due to the urgency of the emergency repairs required and in order to ensure that power was restored to all residential apartments as soon as possible. It is said that the Applicant's decision to act quickly was in the interest of the leaseholders. Throughout the course of the works, Rendall and Rittner were in contact with the Head of the Residents Association at the Premises. On Friday 2 February 2024, the Building Manager

at Rendall and Rittner wrote to the Head of the Residents Association (p.197) confirming that whilst Rendall and Rittner continued to seek to pursue an insurance claim in respect of the works, the costs of the works may become a service charge expenditure. The email provided a breakdown of the costs of the works and explained that carrying out a full consultation would:

- a. Add approximately 12 weeks onto the completion date of the permanent remediation works, thereby adding £5,500 onto the specialist cable hire cost; and
- b. A tender exercise may not be valuable in this instance as material prices will likely be the same for all suppliers and because Jaguar Building Services have been involved directly with this issue from the outset and it would be unwise to swap to another contractor with less knowledge of the specific issue. The Applicant's intention would likely still be to proceed with Jaguar Building Services following receipt of other tenders.

18. The email of the Building Manager to the Head of the Residents Association went on to outline two available options: (1) hold any further works in order to carry out consultation or (2) proceed with Jaguar Building Services for the works, hopefully to be completed by the end of February 2024. The Head of the Residents Association responded to the Building Manager's email on 3 February 2024 endorsing option 2, on behalf of "the Heron Residents".
19. Additionally, Rendall and Rittner had used an online communication system called Dwellant to send out emails to all residents. On 19 July 2023 at 10:31am, (p.203) Rendall & Rittner confirmed to all lessees that they had been informed of a power loss to all apartments. On 19 July 2023 at 13:34pm (p.203), Rendall & Rittner informed all lessees that the issue in relation to the power outage resulted from a burnt out joint in the Busbar. On 19 July 2023 at 14:47pm (p.204), Rendall and Rittner told the leaseholders that they were unable to confirm how long the power outage would continue for and gave them 3 options for how to deal with the issue for the evening in the interim; staying in the apartment with no power, staying at family/friends or going to a hotel. Later on 19 July 2023 at 16:12pm (p.204), Rendall and Rittner confirmed to the leaseholders that the power would not be restored that evening and reiterated the three options in their earlier correspondence. They also reassured the leaseholders that teams would be working through the night in order to remedy the issue and that the communal residents club would remain open until midnight.
20. On 20 July 2023 at 09.16am (p.205), Rendall and Rittner confirmed that power was restored just after midnight on 20 July 2023 and informed them of key details pertaining to; lighting controls, fan coil units, apartment checks, fridge and freezer food, hotel stays and further works. On 31 July 2023 at 12.18pm (p.205), Rendall and Rittner confirmed to the leaseholders that all power had been restored and that they had until 07 August 2023 to report any ongoing issues, otherwise, the issue would not be deemed to relate to the power loss incident. The Building Manager employed by Rendall and Rittner had been having monthly meetings with the head of the informal Residents' Association to inform them of progress of the temporary works in addition to the final remedial works. The insurance claim was raised immediately following the

event in July 2023 which unfortunately was rejected by the insurers despite an appeal having been lodged by Rendall and Rittner on behalf of the Applicant. The final confirmation of rejection of the insurance claim was received on 18 January 2024 by which time the Applicant had already ordered parts. The Works completed on 27 February 2024 (p.207).

21. The Applicant submitted:

- (a) The Applicant instructed the initial portion of the works on the date of the initial incident (19 July 2024), it did not have time to consult under section 20 owing to the urgency of the works given that power supply had been cut off to the residential apartments;
- (b) Carrying out s.20 consultation in relation to the remainder of the works would have delayed the permanent remediation of the affected busbar by 12 weeks and would have meant having to incur an additional 12-weeks' worth of the costs of hiring the temporary cables (approximately £5,500);
- (c) The works were required to be carried out as soon as possible, owing to the health and safety risk of a power outage to residents;
- (d) The works have been instructed so as not to cause any unnecessary delays to remediation;
- (e) The Applicant was unable to carry out a consultation given its decision to proceed with single contractor Jaguar Building Services to carry out the works given their intimate knowledge of the specific issues;
- (f) The Residents' Association was provided with a summary of the works and likely cost and agreed for the Applicant to forego a formal consultation under s.20 and continue with the works as soon as possible;
- (g) There is no prejudice to the Respondents which might be caused by the dispensation of the consultation requirements that the Applicant is aware of. The works have been instructed as soon as possible in the Respondents' best interest;
- (h) Rendall and Rittner is willing to attempt to address any of the leaseholders' concerns;
- (i) The leaseholders can still challenge the reasonableness of the costs of the Works even if dispensation is granted.

The Respondent's case

22. No Respondent objected to the application.

The Law

23. Section 20ZA of the Act, subsection (1) provides:
“Where an application is made to a 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”.
24. The Supreme Court in the case of *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of section 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *“it seems to me that the issue on which the [tribunal] 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”.*

Determination and Reasons

25. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.
26. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* in reaching its decision.
27. The works were urgent and there was a risk to the health and safety of the residents. Rendall and Rittner were in contact with the Head of the Residents Association, which was presented with two options as set out above. The Head of the Residents Association selected the option which was to proceed with Jaguar Building Services for the works. There is no evidence before the Tribunal that the Respondents were prejudiced by the failure of the Applicant to comply with the consultation requirements.
28. The Tribunal is therefore satisfied that it is reasonable to grant unconditional retrospective dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985 in regard to the works set out herein.
29. The Tribunal make no determination as to whether the cost of the works are reasonable or payable. If any leaseholder wishes to challenge the reasonableness of the costs, then a separate application under s.27A Landlord and Tenant Act 1985 should be made.
30. It is the responsibility of the Applicant to serve a copy of this decision on all Respondents and on the Head of the Resident’s Association (and to place a copy of this decision on the Residents’ Portal and display a copy of this decision in a prominent place in the common parts of the Building) within 14 days of receipt of this decision.

Judge Sarah McKeown
20 January 2025

Rights of appeal

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).