



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

Case Reference : **MAN/00BN/LDC/2024/0010**

Property : **Eden Square, 5 Golden Way & 12 Flixton Road, Manchester, M41 5ND**

Applicant : **Plantview Limited**

Applicant's Representative : **Residential Management Group Ltd**

Respondent : **Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC)**

Respondent's Representative : **N/A**

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

Tribunal Members : **Judge Richard M. Dobson-Mason LLB**
Mrs Joanna Bissett FRICS

Date and Venue of Hearing : **Determined on the papers without a hearing**

Date of Decision : **18 March 2025**

DECISION

- (1) The Tribunal unconditionally grants the Applicant’s application for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements contained in Section 20 thereof, in relation to repair works to reinstate the water supply to flats 1a to 12 at 5 Golden Way, Manchester, M41 5ND.**

REASONS

Background

1. The Applicant is Plantview Limited who brings the application (“the Application”) via its agent, Residential Management Group Ltd.
2. The Application relates to Eden Square, 5 Golden Way and 12 Flixton Road, Manchester, M41 5ND (*“the Property”*).
3. The Respondent is the long leaseholder of the residential flats 1a to 12a at 5 Golden Way (*“5 Golden Way”*), within the Property.
4. Whilst, in support of the Application, a lease dated 25 April 2013 between (1) Ask Urmston Developments Limited (2) Urmston Centre Management Limited and (3) Ask Urmston Residential Limited has been provided to the Tribunal, the Applicant has provided no documents or explanation to show that it is the Landlord, and the Respondent is the leaseholder, of 5 Golden Way. The Tribunal has proceeded on the basis that they are the proper parties to the Application, having received no indication to the contrary.
5. The Property was not inspected by the Tribunal, but the Applicant describes it as comprising of two storey blocks of 64 flats at 12 Flixton Road, and a one storey block of 12 flats at 5 Golden Way, both buildings forming the upper storeys over shop units that together form the Eden Square Shopping Centre. 5 Golden Way has a shared office with Inclusion House CIC Ltd, a social landlord for vulnerable adults residing within that block.

The Application

6. On 5 February 2024, the Applicant made the Application under Section 20ZA of the Act to dispense with the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 (*“the Act”*), as set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (*“the Consultation Requirements”*).
7. The Application is brought in respect of repair work commissioned by the Applicant to reinstate the water supply to 5 Golden Way (*“the Works”*).
8. The Works were completed on 10 February 2023, and accordingly the Application is for retrospective dispensation from the Consultation Requirements.

Directions

9. Directions were made by a Legal Officer on 30 October 2024 (*“the Directions”*) requiring sequential filing and service of the parties’ statements of case and evidence in support.

Applicant’s Case

10. The Applicant filed and served a statement of case dated November 2024 in support of the Application setting out, in summary, the following: -
 - a. It was notified on 15 December 2022 that there was no water supply to 5 Golden Way.
 - b. A contractor, Rescom Ltd, was instructed to prepare a report and quote for the related works. The two other contractors approached by the Applicant declined to submit a quote due to the scope of works required.
 - c. On 20 December 2022, the Applicant organised the delivery of a supply of water to 5 Golden Way whilst alternative accommodation was arranged for the residents.
 - d. After providing an initial quote, on 12 January 2023, Rescom Ltd carried out another site inspection and highlighted that additional works were required.

- e. In January 2023, Rescom Ltd provided a final quote for the Works, totalling £22,304.30 excluding VAT, which was accepted by the Applicant.
- f. On 20 January 2023, the Works commenced.
- g. On 10 February 2023, the Works were completed.
- h. The residential flats in 5 Golden Way are occupied by vulnerable adults, let to Inclusion Housing CIC Ltd, a housing association and a health and social care landlord for vulnerable adults.
- i. The Works were urgent due to the residents of those flats requiring a high level of support and 24-hour care.
- j. It has a duty of care to those residents and acted promptly to resolve the issue.
- k. The Applicant attempted to obtain quotes from three reputable contractors but due to their complexity only Rescom Ltd were able to quote.
- l. Time was of the essence for the Works to be completed.
- m. A degree of consultation was conducted by way of email communication with the property manager for the Respondent, and regular verbal updates were provided.
- n. The Respondent has not been prejudiced by the lack of compliance with the Consultation Requirements, and it is reasonable to dispense with them.

Respondent's Case

- 11. No response was received to the Application from the Respondent.

Issues

- 12. The issue to be decided is whether it is reasonable to dispense with the Consultation Requirements and, if so, whether any conditions should be imposed.

Law

13. The Works are “qualifying works” for the purposes of Section 20ZA(2) of the Act and therefore the Consultation Requirements are engaged.
14. A failure to adhere to the Consultation Requirements limits each qualifying tenant’s contribution to the costs of the Works to £250 per service charge year unless dispensation is granted by the Tribunal.

15. Section 20ZA(1) of the Act provides: -

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.

16. In Daejan Investments Ltd v Benson [2013] UKSC 14, the Supreme Court considered the proper approach to an application for dispensation under s.20ZA, noting that: -

- (a) The purpose of the Consultation Requirements is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate for them.
- (b) On that basis, the Tribunal should focus on the extent to which tenants were relevantly prejudiced in either respect by the failure of the landlord to comply with the Consultation Requirements.
- (c) The Tribunal has the power to grant dispensation on such terms as it thinks fit, provided that such terms are appropriate in their nature and effect, including in relation to the recoverability cost of the works and / or the parties’ costs incurred in connection with the application for dispensation.
- (d) However, where the extent, quality and cost of the works were unaffected by the landlord’s failure to comply with the Consultation Requirements, unconditional dispensation should normally be granted.
- (e) The only disadvantage of which a tenant may legitimately complain is one which they would not have suffered if the Consultation Requirements had been fully complied with but which they would suffer if unconditional dispensation were granted.

- (f) Although the legal burden of proof would be, and would remain, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants.
- (g) Given that the landlord will have failed to comply with Consultation Requirements, and the Tribunal is having to undertake the exercise of reconstructing what would have happened, it may view the tenant's arguments sympathetically, for instance resolving in their favour any doubts as to whether the works would have costs less, or that some of the works would not have been carried out or would have been carried out in a different way. The more egregious the landlord's failure, the more readily the Tribunal would be likely to accept that tenants had suffered prejudice.
- (h) The tenants' complaint will normally be that they have not had the opportunity to make representations about the works. Accordingly, the tenants have an obligation to identify what they would have said.
- (i) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- (j) Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs of investigating relevant prejudice incurred by the tenants were unreasonably incurred before it could avoid being required to repay them as a term of dispensation being granted.

Determination

- 17. The Application was determined on the papers on 18 March 2025. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties consent to, or do not oppose it.
- 18. The Applicant, in the Application, requested a paper determination, which was ordered by paragraph 7 of the Directions.
- 19. The parties were notified, by paragraph 3 of the Directions, that unless any party informed the Tribunal that they required an oral hearing the matter would be resolved by way of written representations. No objections were received from the parties.
- 20. The Tribunal is satisfied that the Works were necessary and urgent, considering
 - a) that they related to the supply of water to 5 Golden Way, and
 - b) the vulnerability of the residents thereof.

21. No response or objection to the Application has been received from the Respondent, nor has it sought to have any involvement in the proceedings. However, the Tribunal noted the Applicant's submission that there had been a degree of informal consultation with the property manager for the Respondent, and that regular verbal updates were provided to them.
22. In the circumstances, the Tribunal finds that no relevant prejudice occasioned by the Applicant's failure to comply with the Consultation Requirements has been shown, and no evidence that the extent, quality and cost of the works were affected by that failure has been adduced.
23. In view of the above, the Tribunal is satisfied that it is reasonable to grant the Application without any conditions.
24. This determination does not affect the Respondent's right to apply to the Tribunal to determine the payability of the cost of the Works under the terms of the lease, or the reasonableness of the Works in terms of quality or amount, pursuant to 27A of the Act.

Judge Richard M. Dobson-Mason

18 March 2025