



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

Case reference : **LON/00AW/LDC/2020/0155 P**

HMCTS code: : **P: PAPERREMOTE**

Property : **27 Cadogan Place, London SW1X
9SA**

Applicant : **Cadogan Estates Limited**

Representative : **HLM Property Management**

Respondent : **The five long leaseholders of 27
Cadogan Place named in the
application**

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

Tribunal members : **Judge Pittaway**

Date of decision : **3 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by any respondent. The form of remote hearing was P:PAPERREMOTE. 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 bundles of 132 pages, the contents of which the tribunal has noted. The decision made is set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from further statutory consultation in respect of the subject works, namely the replacement of the burner of the communal boiler to ensure provision of heating and hot water to all apartments in the Property.

The applicant should place a copy of this decision together with an explanation of the leaseholders' appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent position in the common parts of the Property.

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 the cost of the work.

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation from consultation in respect of the replacement of the burner to the communal boiler. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The cost of the works the subject of the application exceed this threshold.
2. By directions dated 25 September 2020 (the "**directions**") the tribunal directed the applicant prepare a statement of case containing details of the cost/estimated cost of the work, details of alternative quotes obtained and why the works could not have been anticipated so as to allow time for consultation. The tribunal also directed that the applicant send each of the leaseholders the application, the tribunal's directions, the applicant's statement of case and display the same in the

common parts of the Property, confirming to the tribunal that it had done so. The applicant confirmed to the tribunal on 2 October 2020 that it had complied with this direction.

3. The directions required any leaseholder who opposed, or positively supported, the application should tell the tribunal. If they opposed the application they should send the tribunal and the applicant's representative a statement responding to the application together with any documents they wished to rely on. The tribunal has received no such statements of objection/ support and the applicant confirmed to the tribunal that it received no replies from any of the leaseholders.
4. 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

5. The applicant is the freeholder of the Property, acting by its agent HLM Property Management. The freeholder covenants to provide services under the terms of the leases under which the apartments are held. For the first floor flat and the flat on the third and fourth floors these services include (at paragraph 17 of Part 3 of Schedule 4 of each lease) 'Inspecting servicing maintaining repairing amending overhauling renewing and replacing the heating equipment the water distribution equipment and all other plant and equipment which serves the Building but excluding any items or part of any items thereof whose maintenance is the exclusive responsibility of the tenant or the tenant of any other part of the Building'. For the second floor flat the services include (at paragraph 2 of Part II of the Fourth Schedule), 'The cost of repairing and maintaining the central heating boilers.'
6. In its application the applicant explained that the burner for the communal boiler failed in August 2020. It is an electrical component of the communal boiler and its failure could not have been anticipated by the six-monthly servicing of the boiler system as a whole. Two quotes were obtained for replacement burners suitable for the Viessmann model of boiler; one at £2,247.66 and the other £3,368.16, both from Viessmann Direct. Replacement boilers are only obtainable from Europe with a lead-in time of 3-6 weeks.
7. Section 20 stage one notices were issued on 15 September 2020 (expiring 20 October 2020) under cover of a letter advising that an application would be made to the tribunal for dispensation from the section 20 consultation requirements.
8. The applicant sought dispensation as temporary arrangements to provide hot water to the property were possible, but not to provide heating. It considered the works to be urgent as the temporary

restoration of the hot water services would be placed under strain when the occupancy of the Property increased in the autumn, and there would be the need for heating as the weather changed.

The Respondents' case

9. No respondent objected to the application

Determination and Reasons

10. Section 20ZA(1) of the Act provides:
“Where an application is made to a leasehold valuation 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.”
11. 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.
12. The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in reaching its decision.
13. There is no evidence before the tribunal that the respondents were prejudiced by the failure of the applicant to comply with the consultation requirements. The tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the replacement of the burner of the communal boiler.
14. Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the tribunal in relation to this present application. 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 works.

Name: Judge Pittaway Date: 3 November 2020

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.