



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

Case reference : **LON/00AG/LDC/2021/0079**

HMCTS code : **P: PAPERREMOTE**

Property : **2-9 Cambridge Gate, London NW1 4JX**

Applicant : **Cambridge Gate Management Limited**

Representative : **Burlington Estates Ltd**

Respondent : **The leaseholders listed in the schedule annexed to the application**

Representative : **-**

Type of application : **Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**

Tribunal members : **Tribunal Judge Brandler**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **28th June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 118 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal grants the applicant dispensation from the statutory consultation requirements in respect of urgent remedial works to the communal boilers located in the basement of House 5, as detailed in the report dated 19th November 2020 from AMA.
- (2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property, **2-9 Cambridge Gate London NW1 4JX** comprises ten period town houses which have been subsequently converted to form 26 self-contained flats served with communal heating and hot water provided by four boiler houses located in the basement.
2. The applicant is the head lessee (the landlord) of the property, by a lease granted for a term of 150 years from 5th July 1993. The respondents are the sub-lessees (the tenants) and are detailed in the list annexed to the application.
3. The property is managed by Burlington Estates.
4. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle, enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
5. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are in an electronic/digital trial bundle of 118 pages, the contents of which I have noted.
6. The applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.)

7. The request for dispensation concerns urgent remedial works required to the communal boiler room located in the basement of House 5. The boiler room is a gas fired sealed system and consists of Hamworthy Modumax boilers, heating circulating pumps, heating pressure sets, pipe work and valves, safety circuit and flue dilution system. Works are required to ensure that the boiler and associated pipework is compliant with regulations.
8. On 19th November 2020 a mechanical engineer for AMA, carried out an inspection and produced a mechanical report [17-34]. That report details the urgent works required in relation to Boiler Room No. 5. The report finds that the current installation is of a poor standard and that the following works are urgently required:
 - *Safety valves to be installed on each boiler and set to 0.7 bar above working pressure.*
 - *Ensure flue dilution fan automatic controls are working to ensure boilers to go into safety shut-down and lockout in the event of a fan failure*
 - *Provide adequate support to LTHW pipework*
 - *Install condensate pipework to flue system*
 - *Extend external boiler condensate pipework to gully, insulate and protect.*
 - *Paint gas pipework to BS 381C 309 canary yellow*
 - *Install local IP rated rotary isolators adjacent to each boiler.*
 - *The wiring to the boilers should be in armoured fire-retardant sub main cabling.*
 - *Cap off open ended pipework*
 - *Complete insulation*
 - *Confirm that mechanical assisted flue complies with IGEM UP10*
 - *Provide operating and maintenance manual, record drawing and test certification*
9. The Directions of 24th March 2021 required any tenants who opposed the application to make their objections known on the reply form produced with the Directions. As far as the Tribunal is aware no objections were received from any of the tenants.

The decision

10. By Directions of the tribunal dated 24th March 2021 it was decided that the application be determined without a hearing or by way of a video hearing if objections were made. There being no such objection, the case will be determined on written representations.
11. The tribunal had before it a bundle of documents prepared by the applicant that contained the application, grounds for making the application, and the first and second stages in the Section 20

Consultation process which included two estimates from contractors to undertake remedial works to the boilers in the basement of House 5.

Reasons

12. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**

13. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgement, Lord Neuberger said as follows:

44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT 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.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

14. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act “if satisfied that it is reasonable to dispense with the requirements”

15. We had regard to the fact that the applicant has sought to engage with the statutory consultation process, and that none of the tenants have written to the tribunal objecting to this application.

16. We are satisfied that there is an urgent need to address the issues identified by the application and that, in the circumstances, it is reasonable to dispense with the consultation requirements set out in section 20 of the 1985 Act.

17. The cost of the Major Work is not relevant to this application. This is because this decision does not concern the issue of whether any service charge costs will be reasonable or payable. The tenants have the right to challenge such costs by way of a separate application if they so wish.
18. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders named on the schedule attached to the application. Furthermore, the applicant shall place a copy of the tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the buildings. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights

Name: Tribunal Judge Brandler

Date: 28th June 2021

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).

APPENDIX 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—
 - (i) the address to which such observations may be sent;

- (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
- (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
- (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
- (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
 - (c) make all of the estimates available for inspection.

- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
 - (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;

- (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.

- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

- 5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

- 6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
 - (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

