

12779



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

Case Reference : LON/00AE/LDC/2018/0025

Property : Argo House, 180 Kilburn Park Road,
London NW6 5FA

Applicant : Brigante Properties Limited

Representative : Fiona Docherty (James Andrew
Residential Limited, managing agents)

Respondents : The leaseholders whose names are
attached to this decision

Representative : Chris Green (Solicitor Advocate)
appeared on behalf of Home Group
Limited

Type of Application : Dispensation with Consultation
Requirements under section 20ZA
Landlord and Tenant Act 1985.

Tribunal Members : Judge Robert Latham
Mr Michael Taylor, FRICS

**Date and venue of
Hearing** : 1 May 2018
at 10 Alfred Place, London WC1E 7LR

Date of Decision : 1 May 2018

DECISION

(1) The Tribunal consents to the Applicant withdrawing their application for dispensation under section 20ZA Landlord and Tenant Act 1985.

- (2) The Tribunal records that James Andrew Residential Limited and Home Group Limited have agreed:
- (a) to commission a joint report on the heating and hot water system at Argo House, the said report to address the cause of the problems that have affected the system and any further works that may be required. Each party will pay 50% of the cost of the report.
 - (b) that the landlord will not pass on through the service charge any works executed in respect of the heating and hot water system in so far as these are due to the defective installation or the failure to properly maintain the heating and hot water system.
- (3) The Tribunal makes no order for the refund of any tribunal fees paid by the Applicant.
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (5) For the avoidance of doubt, this decision does not preclude the landlord from making a further application for dispensation under section 20ZA Landlord and Tenant Act 1985, if so advised.
- (6) This Order will be served on the parties as specified in [7] below.

Reasons

1. By an application made on 24 January 2018, applies for dispensation under section 20ZA Landlord and Tenant Act 1985. In January, Vertex had started on a programme of works to remedy the defects to the communal heating and hot water system at a cost of £46,514 + VAT. There are three boilers. The Applicant contends that only one was working.
2. Argo House consists of 93 residential units and two commercial units. The commercial units are not covered by the communal heating system. In October 2016, the development was completed. On 7 November 2016, the developer, James Taylor Development Limited ("James Taylor") disposed of their freehold interest to the Applicant for £700,000. The leaseholders contend that the heating system was defectively installed and has not been properly maintained.
3. The Tribunal has issued Directions dated 13 February and 12 March 2018. Pursuant to these Directions, the following leaseholders have notified the Tribunal that they oppose the application:

(i) Home Group Limited (“Home Group”) owns Flats 66-93. Five of these are occupied under share ownership schemes; the remainder under Assured Tenancies at social rents. Their lease, which was granted by James Taylor, is dated 14 August 2014. It was granted for a term of 125 years. Chantel Simmons, Hafida Simmons and Mustafa, the sub-tenants of Flat 69 have also informed the Tribunal that they oppose the application.

(ii) Dragon Investment Management Ltd (“Dragon”) owns Flats 1, 6, 7, 13, 14, 15, 16, 18, 19, 20, 21, 22, 27, 29, 37, 42, 43, 51, 57, 59, 60, 61 and 64. On 14 July 2016, James Taylor granted Dragon a 999 year lease in respect of what was then known as “Apartment B07”). Fladgate LLP represents Dragon. On 8 March, Fladgate informed the Tribunal that the leaseholder did not wish to attend the hearing.

(iii) Paul Barlow, the leaseholder of Flat 38.

(iv) Alex Maldini, the leaseholder of Flat 62.

(v) David Spence, the leaseholder of Flat 8.

4. The following attended the hearing today:

(i) Fiona Docherty (Managing Director) and Stacey Wyer (Senior Property Manager) on behalf of James Andrew.

(ii) Chris Green (Solicitor Agent), together with Rod Macgillivray (Senior Delivery Manager) and Augustina Dougan (Leasehold Manager) from the Home Group.

(iii) Ms Chantel Simmons, the sub-tenant of Flat 69.

5. The leaseholders oppose the application on the ground that they have been prejudiced by the landlord’s failure to embark upon the full consultation procedure. They dispute the scope of the works that are proposed and contend that they should not be liable for the cost of the works as these have been necessitated by defective design and inadequate maintenance.

6. In the light of the agreement reached by the parties at the hearing, there is no need for the Tribunal to address the issues that have been raised in both the written and the oral submissions. An issue arose as to where the duty to consult falls where there is an intermediate landlord and sub-tenants. The parties are referred to the decision of the Upper Tribunal on Leaseholders of *Foundling Court and O’Donnell Court v Camden LBC [2016] UKUT 366 (LC)*. The obligation is on the superior landlord is to consult all those leaseholders who may be

required to contribute towards the cost of the works through their service charge.

7. The Tribunal makes the following Direction in respect of the service of this order:

(i) The Tribunal will send a copy of this decision to the parties specified in [3] above.

(ii) James Andrew shall send a copy of this decision to any leaseholder not listed in [3] above.

(iii) Homes Group shall send a copy of this decision to any sub-tenant who may be liable for any service charge in respect of the proposed works to the heating and hot water system.

Judge Robert Latham

1 May 2018

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).