



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

**Case Reference** : **CAM/26UK/LDC/2022/0031**

**HMCTS code  
(paper, video, audio)** : **P:PAPERREMOTE**

**Property** : **Wilmington Close Watford WD18  
oFQ**

**Applicant** : **Wilmington Close RTM Limited**

**Representative** : **Barnard Cook – Tony Jacobs**

**Respondents** : **All leaseholders of dwellings at the  
property (including any of their sub-  
tenants of any such dwelling) who  
are liable to contribute to the cost of  
the relevant agreements**

**Type of application** : **For dispensation from consultation  
requirements - Section 20ZA of the  
Landlord and Tenant Act 1985**

**Tribunal members** : **Mary Hardman FRICS IRRV(Hons)**

**Date of decision** : **19 October 2022**

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**DECISION**

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**Description of hearing**

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in an unpaginated electronic bundle from the Applicant. I have noted the contents and my decision is below.

## **The tribunal's decision**

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in respect of qualifying long-term agreements for gas and electricity to the development

## **Reasons for the tribunal's decision**

### **The application**

- (1) The applicant freeholder seeks retrospective dispensation with the statutory consultation requirements in respect of qualifying long-term agreements for gas and electricity in respect of the 143 residential units in the development.
- (2) The relevant contributions of leaseholders through the service charge towards the costs under these agreements would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
  - (i) were complied with; or
  - (ii) are dispensed with by the tribunal.
- (3) In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
- (4) **The only issue here for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements**
- (5) **This application does not concern the issue of whether any service charge costs under the relevant agreements will be reasonable or payable or by whom they are payable.**

### **The Property and parties**

- (6) The applicant says the property consists of 40 social housing units, 8 commercial units and 103 private flats. The application is made in respect of the residential units
- (7) The application is made by Barnard Cook on behalf of the landlord, Wilmington Close RTM limited. The application was made against the leaseholders of the relevant flats (the “**Respondents**”)

### **Procedural history**

- (8) The Applicant says that retrospective dispensation is sought, as explained below.
- (9) Initial case management directions were given on 31 August 2022. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond 28 September 2022.
- (10) The directions further provided that this matter would be determined on or after 19 October 2022 based on the documents, without a hearing, unless any party requested an oral hearing
- (11) The applicant wrote to the leaseholders on 14 September 2022. No responses were received by the tribunal from leaseholders and a hearing was not requested.
- (12) On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

### **The Applicant's case**

- (13) Documentation provided by the Applicant states that the gas contract for the development ended on 30 August 2022, and the three electricity contracts ended on 30 September 2022. Barnard Cook, as managing agent approached 2 energy brokers.
- (14) Having got a response from both brokers on 4th August 2022 it became clear that there was a significant cost saving (totalling approx. £62k per annum) of signing multiple year versus 12-month contracts. Following a Board Meeting it was agreed that, given the significant saving they would seek 24-month contracts which have since been signed.
- (15) The applicant considered that, given the state of the energy market, it was not viable to carry out a consultation on the long-term agreements as contracts would need to be signed on the day they were issued. It was felt to be in the best interest of the leaseholders to go ahead and sign the 24-month contracts and retrospective dispensation was therefore needed.

### **The Respondents' position**

- (16) As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.

- (17) The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed

### Determination

- (18) Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
- (19) This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
- (20) The tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the long-term agreements for gas and electricity.
- (21) It therefore determines under section 20ZA of the 1985 Act to dispense with all relevant consultation requirements in relation to these agreements.
- (22) **This is not an application for the tribunal to approve the reasonableness of the contracts or the reasonableness, apportionment or payability of any service charge demand.**
- (23) **I make no finding in that regard and the leaseholders will continue to be able to make an application under section 27A of the Act in respect of the reasonableness of the agreements and/or the reasonableness, apportionment or payability of the service charge demand for them.**
- (24) There was no application to the tribunal for an order under section 20C of the 1985 Act.
- (25) The Applicant shall be responsible for serving a copy of this decision on all leaseholders.

**Mary Hardman FRICS IRRV(Hons)  
19 October 2022**

## **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).