



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

**Case Reference** : **CHI/00MR/LDC/2022/0029**

**Property** : **Foxmead Court, Meadowside  
Storrington, West Sussex  
RH20 4FN**

**Applicant** : **McCarthy & Stone Management**

**Representative** : **Mr Wilkinson**

**Respondent** : **(1) Mr Coventry  
(2) Mr Cusition**

**Representative** : **Mr Coventry, in person,  
Mr Cusition by his son**

**Type of Application** : **s.20ZA,  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Judge Dovar  
Mr Ridgeway MRICS  
Mr Sennett**

**Date and venue of  
Hearing** : **9<sup>th</sup> June 2022, Havant**

**Date of Decision** : **9<sup>th</sup> June 2022**

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**DECISION**

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1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. In particular this relates to works that were carried out at the Property between 17<sup>th</sup> and 18<sup>th</sup> December 2021, to the air source heat pumps that provide heating and hot water.
2. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**
3. From about the end of November 2021, the Applicant says that reports and complaints were received that the heating and hot water was not functioning properly at the Property. They are provided by the air source heat pump system, which comprises three pumps, each containing a compressor and uses gas to function. The Respondents both contend that this issue had been live for many years and was likely to have been a result of poor maintenance.
4. The Applicant called out the contractors who service the system under a maintenance contract, GP Plumbers, who attended in early December and provided an estimate for the cost of works on 8<sup>th</sup> December 2021. That was for: Replace a set of compressors; Replace sensors; and repair burnt out connector, totalling £9,964.19. The notes on the estimated stated that there was a compressor fault on one pump (which had previously been disconnected), another was low on gas, with a supply cable 'not up to standard' and the third had previously burnt out connectors which had not been repaired correctly, was low on gas and had been the subject of 'poor electrical work' on the power supply.
5. Those works were carried out on 17<sup>th</sup> and 18<sup>th</sup> December, which included replacing two compressors (the Applicant said that they came in pairs), the sensors and the connector and topping up the gas. An invoice in the amount of the estimate was presented on 19<sup>th</sup> January 2022.
6. The Applicant said that they did not comply with the statutory consultation procedure at all as they considered the works were urgent. The Property is a residential retirement home and they were concerned that any delay would cause great difficulty for the residents over the cold winter period. They also said that there were lead time delays on acquiring materials and that PG Plumbers were 'trusted contractors' familiar with the site and knew how to operate and access the equipment. It was therefore not considered necessary or appropriate to obtain alternative quotes, let alone consult the leaseholders.
7. On 1<sup>st</sup> April 2022 a further invoice was presented for £4,253.21 for the cost of topping up the gas in the units when the repair work had been

carried out. The Applicant said that this additional invoice had been delayed due to the contractors oversight and that the actual amount of gas used was not known until the repair had been actually carried out in December. The application also covers the supply of gas under this invoice.

8. The Applicant stated that again they had not sought alternative quotes or even sought to obtain a price on this supply as it was from a trusted contractor and that their contracts team kept the various contracts under review, presumably to ensure value.
9. It is in respect of the costs and work reflected in those two invoices that the Applicant seeks dispensation as it says that due to the urgency of having heating and hot water in winter, no statutory consultation at all was carried out.
10. The Respondents complaints were regarding the failure to take remedial action earlier. Mr Cusition's frustration was clear and understandable, although it did appear that the works carried out had remedied the problem. In terms of whether or not give dispensation when no consultation had been carried out at all, the Tribunal is mindful of the fact that the works were urgent in that this problem arose in the middle of winter. Whilst there may have been issues in the past and the estimate indicates historic poor workmanship, they are not matters that fall for our consideration in this application. The Tribunal's focus is on whether or not the leaseholders have suffered any prejudice by reason of the lack of consultation. Firstly, there was no suggestion that the scope of the works carried out was wrong or would have been different had the consultation been carried out (the cause of the disrepair being a different issue). Secondly, there was no suggestion that a better quote would have been obtained or a different contractor selected.
11. In light of the lack of any demonstrable prejudice and given the narrow focus of this application, the Tribunal gives dispensation to the consultation requirements for the works identified in the two invoices referred to above.

Judge Dovar

## **Appeals**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.