



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

Case reference : **LON/00AW/LDC/2022/0194**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **Chelsea House, 24,25 and 26
Lowndes Street, London, SW1X
9JE**

Applicant : **Barmouth Limited**

Representative : **Forsters LLP**

Respondents : **The lessees listed in the schedule to
the application**

Type of application : **To dispense with the requirement
to consult leaseholders**

Tribunal Member : **Judge N Hawkes
Ms M Krisko FRICS**

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

Date of paper determination : **29 November 2022**

DECISION

PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 312 pages (including index). The order made is described below.

Decision of the Tribunal

The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 7 October 2022.

Background

1. By an application dated 9 September 2022, the Applicant has applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to Chelsea House, 24,25 and 26 Lowndes Street, London, SW1X 9JE ("the Property").
2. The Tribunal has been informed that the Property comprises 32 flats. ("the Flats"). The Respondents are the lessees of 13 of the Flats and the remainder of the flats are owned by the Applicant.
3. The Applicant has maintenance responsibilities for the Property pursuant to the leases for the Flats. The Property has four boilers which supply heating and hot water to the Flats.
4. The Applicant seeks dispensation from the statutory consultation requirements in respect of proposed work to remedy defects to two of the boilers at the Property.
5. In its Grounds for Seeking Dispensation, the Applicant states:
 6. *The Applicant has an annual maintenance agreement with Quotehedge Ltd ("Quotehedge"). On 17 May 2022, Quotehedge attended the Property to carry out a major service and prepare a gas safety certificate. Quotehedge's report dated 17 May 2022 identified that two of the boilers require remedial works ("the Works").*
 7. *The Applicant has tendered for remediation of the boilers. The Applicant has obtained three quotes.*
 - a. *Hamworthy quoted for the cost of repair of the two boilers in the sum of £15,960.44 but have not provided a breakdown of the cost.*

b. Quotehedge quoted for repair work in the sum of £22,650.00 and provided a breakdown of the cost of the Works.

c. Pimlico quoted for replacement of the two boilers in the sum of £85,080.00.

8. On 26 September 2022, the Applicant instructed Quotehedge to carry out the Works as per the quote dated 19 May 2022.

9. The reason for the delay in deciding which company to instruct to carry out the remedial works was because the Applicant was waiting for the quote from Pimlico, which was provided on 16 September 2022.

10. Quotehedge has ordered the relevant parts to carry out the Works. The Works will commence as soon as those parts have arrived.”

6. The application is dated 7 October 2022 and the Respondent lessees are listed in a schedule to the application.
7. Directions of the Tribunal were issued on 31 October 2022.
8. The Directions included provision that this application would be determined on the papers unless an oral hearing was requested. No application has been made by any party for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 29 November 2022.
9. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute.

The Respondents' case

10. None of the Respondents have submitted a reply form to the Tribunal and/or have made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements.
11. The Applicant has informed the Tribunal that the Applicant has not received any reply forms or representations opposing the application from any of the Respondents, but the Applicant has received responses from some of the leaseholders by email confirming that they do not object to the application.

The Tribunal's determination

12. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.

13. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
14. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
15. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. In determining this application, the Tribunal has considered *Daejan Investments Ltd v Benson* [2013] UKSC 54, [2013] 1 WLR 854.
16. In all the circumstances and having considered:
 - a. the Applicant's application;
 - b. the evidence filed in support of the application; and
 - c. the fact that none of the Respondents has submitted a reply form to the Tribunal and/or has made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements;

the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 7 October 2022 in order that the relevant boilers can be repaired as soon as possible.

17. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge N Hawkes

Date: 29 November 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).