



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

Case Reference : **LON/00BG/LDC/2022/0050
P: PAPERREMOTE**

Property : **Ontario Tower, New Providence
Wharf, London E14 9PQ**

Applicant : **(1) Ballymore Ontario Limited
(2) Blazecourt Limited**

Representative : **Charles Russell Speechlys LLP**

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

Representative : **Unrepresented**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985
Dispensation with consultation
requirements**

Tribunal member(s) : **Judge Donegan**

**Date of Paper
Determination** : **05 July 2022**

Date of Decision : **05 July 2022**

DECISION

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 all issues could be determined on paper. The documents that I was referred to are in a bundle of 368 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') for the replacement of the communal boilers and heat infrastructure improvement works at Ontario Tower, New Providence Wharf, London E14 9PQ ('the Building').**
- (b) No terms are imposed on the grant of dispensation.**
- (c) The applicant shall send a copy of this decision to each of the respondents, either by email, hand delivery or first-class post and shall send an email to the Tribunal by 15 July 2022, confirming the date(s) when this was done.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted on 11 March 2022 and directions were issued on 06 April 2022. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 05 July 2022.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Building is a 29-storey block containing a hotel, commercial unit and 256 residential flats. The first applicant is the head-lessee of the Building, and the respondents are the underlessees of the 256 flats. The second applicant holds an intervening lease of the Building and is the respondents' immediate landlord. The Building is managed by Ballymore Asset Management Limited ('BAML') on behalf of both applicants.
5. The applicants seek dispensation from the statutory consultation requirements for the replacement of two gas boilers and associated pipework that provide heating and hot water for all residents. The boilers were installed in 2006 and commissioned in early 2007. Their expected life expectancy was 25-30 years. The boilers began to fail in 2019 and obtaining replacement components became increasingly difficult, due to the age of the system.

6. BAML served stage 1 notices of intention to replace the boilers and pipework on 28 October 2019. They subsequently obtained a specification and tenders for this work and served stage 2 notices, including statements of estimates, on 25 June 2021. In the meantime, the original boilers stopped working and heat and hot water had to be provided by temporary boilers.
7. The most competitive tender was from Cilantro for £545,568.82, including VAT but excluding project management fees.
8. The first applicant obtained a site audit report from heat network consultants, Fairheat Limited ('Fairheat') dated 09 September 2020. This identified longer term issues with the proposed boiler system and recommended modifications to ensure the longevity of the equipment/system and improve efficiency. A revised specification and re-tenders were obtained. Cilantro remained the most competitive contractor, but the cost of the revised scheme was substantially higher.
9. The first applicant sought funding for the revised scheme from the Department for Business, Energy and Industrial Strategy ('DBEIS'). Funding of £298,291 was approved on 20 December 2021. This was conditional on individual meters being installed in the flats and the funding being spent by the end of March 2022. The first applicant has agreed to bear the cost of installing the meters. The balance of the cost of the revised scheme, after deducting the DBEIS funding, is £709,918 including VAT.
10. BAML notified the leaseholders of the applicants' intention to proceed with the revised scheme of work in letters dated 26 January and 02 February 2022. They subsequently responded to various queries regarding the work.
11. The revised scheme differs from the work envisaged in the statements of estimates and the applicants seek dispensation from the section 20 consultation requirements.
12. The only issue for the Tribunal is whether 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.**

The grounds of the application

13. The grounds are set out in a helpful statement of case that accompanied the application. These can be summarised as follows:
 - (a) The original boilers have failed and require replacement.
 - (b) There has been a section 20 consultation based on the original specification.

- (c) The specification was revised in the light of Fairheat's recommendations. The aim of the modifications is to enhance the performance of the equipment, which will extend the life cycle of the system. The individual meters will enable leaseholders to only pay for energy supplied to their flats.
 - (d) There was insufficient time to undertake a further section 20 consultation, for the revised scheme, given March 2022 deadline for spending the DBEIS funding.
14. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No objections have been received by the applicants.

The Tribunal's decision

15. The Tribunal grants dispensation for the revised scheme of work, being the replacement of the two communal boilers and heat infrastructure improvement works. No terms are imposed on the grant of dispensation.

Reasons for the Tribunal's decision

16. The Tribunal accepts the work was urgent, given the original boilers had failed and the March 2022 deadline for spending the DBEIS grant. There was insufficient time to undertake a further section 20 consultation before this deadline.
17. The first applicant acted reasonably in seeking advice from Fairheat and then applying for the DBEIS grant.
18. There was a formal section 20 consultation for the original scheme of work. BAML notified the leaseholders of the applicants' intention to proceed with the revised scheme in early 2022 and responded to various queries.
19. None of the respondents has contested the application or identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.
20. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
21. This decision does not address the cost of the revised scheme, or whether the respondents are liable to contribute to the cost via their

service charges. Nothing in this decision prevents the respondents from seeking a determination of ‘payability’, pursuant to section 27A of the 1985 Act.

Name: Tribunal Judge Donegan **Date:** 05 July 2022

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.
- (2) In section 20 and this section –
“qualifying works” means works on a building or any other premises, and
“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which –
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.