



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

Case reference : **LON/00BK/LDC/2021/0227**
P:Paperremote

Property : **37-41 New Cavendish Street**
London W1G 9TN

Applicant : **Howard De Walden Estates Limited**

Respondent leaseholders : **The leaseholders named on the application**

Type of application : **To dispense with the consultation requirements under S.20 Landlord and Tenant Act 1985**

Tribunal member(s) : **Mrs E Flint FRICS**

Date and venue of determination : **8 November 2021**
Remote on the papers

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondent. A face to face hearing was not held because it was not practicable, no-one requested the same, and all the issues could be determined on the papers. The documents that I was referred to were emailed to the Tribunal, the contents of which I have recorded.

Decision of the tribunal

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to the replacement of the boiler in the building.
- (2) The question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Background

1. The application under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) was made by the Applicant on 2 September 2021.
2. The Applicant is the freeholder of a block containing 8 flats, 6 of which are subject to long leases. They have applied for dispensation from the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the replacement of heating infrastructure because they only received one tender and work cannot be delayed for a further tendering process due to the pending onset of autumn and winter.
3. Directions were issued on 7 September 2021 requiring the applicant to prepare bundles by 29 October 2021 to include statements
 - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies and copies of any replies from the tenants;
 - (ii) The Leaseholders were asked to confirm by 1 October 2021 whether or not they would give their consent to the application.
 - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application and provide copies of all documents to be relied upon by 8 October 2021.
4. No objections were received from the leaseholders.
5. The Leaseholders were informed in the Directions issued by the Tribunal that the question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Evidence

6. The building comprises eight flats in a purpose built block on the first, second, third and fourth floors above commercial premises on the ground floor and basement.
7. On 16 April 2021, the Applicant served a Notice of Intention to Carry out Qualifying Works (the Notice of Intention) on each of the Respondents. The consultation period in respect of the Notice of Intention ended on 28th May 2021.
8. Hartnell Taylor Cook LLP were instructed by the freeholder to tender the replacement of the heating infrastructure at 37 – 41 New Cavendish Street. The tender pack was issued to the tendering contractors (and replacement contractors) on 28th June 2021 and 1st July 2021 and comprises specification and form of tender. A tender walk round was conducted by Hartnell Taylor Cook LLP on the 19th July 2021 to aid the contractors in formalising their bid.
9. The tender process started by supplying five contractors with four different options:
 - Option 1: Boiler replacement with retained pipework
 - Option 2: Boiler and pipework replacement
 - Option 3: Individual Condensing Boilers installation
 - Option 4: VRV/VRF System installation
10. Of the five firms, three chose not to take part, one pulled out a week before the tender date, leaving only Cooltech Limited which provided quotations for all four options as follows:

Option 1	£56,631
Option 2	£158,643
Option 3	£105,887
Option 4	£226,865
11. Hartnell Taylor Cook advised that option 1 provided a value-for-money solution while being the least intrusive option to the apartments and tenants. The new complete system with appropriately sized gas-fired boilers will cover the apartments' heating requirement, while the plate heat exchanger, pressurization unit and new pump-set will safeguard, as far as practicable, the existing pipework installation and minimise pressure losses. Heat cost allocators have also been included in the offer as to remain compliant to the new Heating Networks Regulations.

12. Therefore, on the basis of cost, system advantages/disadvantages and the time constraints related to this project, their recommendation was Option 1; the replacement of the existing boilers only, without replacing the existing pipework.
13. The Applicant served on each of the Respondents under cover of letters dated 17 August 2021 a Statement of Estimates and accompanying Notice in relation to the Works and confirmed they would begin no earlier than 27 September 2021. Although the Applicant has given requisite notice of its intention to carry out the Works, as the Applicant was only able to provide details of one contractor, the Respondents were advised that this Application was being made to the Tribunal.
14. The Applicant accepted the advice because the delay which would be incurred if there was to be another tender process was unacceptable in view of the onset of Autumn. It was necessary to begin the work promptly to ensure that the flats were heated during the colder months of the year.

The Decision

15. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
16. The Tribunal determines from the evidence before it that the works were necessary, were required to be completed urgently and that no prejudice to the lessees has been demonstrated or asserted.
17. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted.

Name: Evelyn Flint

Date: 8 November 2021

RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.