



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

Case Reference(s) : **MAN/OOBY/LDC/2019/0002
MAN/OOBY/LDC/2019/0003**

Properties : **Studio apartments at Norfolk House 1,
68 Norfolk Street, Liverpool L1 0DB
Studio apartments at Norfolk House 2,
42 Simpson Street, Liverpool L1 0DB**

Applicant(s) : **Baltic Development Limited (Norfolk
House 1) & Baltic Property Management
Limited (Norfolk House 2)**

Respondents : **Leaseholders of the Properties**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Laurence Bennett (Deputy Regional Judge)
Niall Walsh (Deputy Regional Valuer)**

Date of determination : **11 April 2019**

Date of Decision : **16 April 2019**

DECISION

Application

1. Baltic Developments Limited and Baltic Property Management Limited apply to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of fire related work in respect of cladding at the Properties.
2. The Respondents are the individual Residential Leaseholders of apartments at the Properties.

Grounds and Submissions

3. The applications were received by the Tribunal on 5 February 2019.
4. The Applicants have responsibility for the management of the Properties in accordance with the Leaseholders' Leases.
5. Although separate in respect of Norfolk House 1 and Norfolk House 2, the applications have been treated jointly to be determined together.
6. On 12 March 2019 the Tribunal made directions relating to service of the application and arrangements for a response. It was directed that in the absence of a request for an oral hearing the application would be determined upon the parties' written submissions without a hearing.
7. The Properties are described as developments of 156 studio apartments with commercial units on the ground floor (No 1) and 100 studio apartments (No 2).
8. The Applicants state in the application forms that "The building has received an improvement notice based on the replacement of the cladding. This is a fire safety concern of the Merseyside Fire Service and the Liverpool City Council The improvement notice states that the work to replace the cladding has to start before 31/1/2019 and be completed before 31/3/2019. We seek dispensation to achieve the shortest possible time frame in replacing the cladding."
9. Further information states that "The Leaseholders and residents of the buildings have been provided with a copy of the improvement notice from the Council."
10. The Applicants state that the work is urgent for the reasons set out above because of the time limits within the improvement notices and the impact of health and safety requirements."
11. In accordance with directions the Applicants have provided copies of the improvement notices under Section 12 of the Housing Act 2004 and emails to Leaseholders informing the position. Their full statement of case includes an explanation of the underlying risks in respect of cladding, a timeline and a quotation from Newry Construction with details of the proposed replacement material. It is noted that currently service charge payers are funding a waking watch as an interim measure.

12. The Tribunal has not received submissions or an acknowledgement from a Respondent.
13. Neither the Applicants nor a Respondent requested a hearing.
14. The Tribunal convened without the parties to determine the application on 11 April 2019.

Law

15. Section 18 of the Act defines “service charge” and “relevant costs”.
16. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
17. Section 20 of the Act states:-
“Limitation of service charges: consultation requirements
 Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 a. complied with in relation to the works or
 b. dispensed with in relation to the works by the First Tier Tribunal
 This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
18. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
19. Section 20ZA(1) of the Act states:-
 "Where an application is made to a 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."

Tribunal’s Conclusions with Reasons

20. We considered the written evidence accompanying the application.

 Our conclusions are:-
21. It is not necessary for us to consider the extent of the service charge payable by the Respondents that has resulted from the work. If disputed when demanded an application may be made to the Tribunal under Section 27 Landlord and Tenant Act 1985.
22. We find from the regulatory notices that it is necessary for work to commence as quickly as possible to comply with statutory requirements. It is clear that the work has been assessed necessary by the Authorities because of the potential to severely impact on the health, safety, utility and comfort of occupiers and visitors to the apartments and common parts at the Properties.

23. Although formal consultation has not taken place, we are satisfied that the Leaseholders have been informed of the position and quotations for the work have been notified. We have not identified a specific prejudice to Leaseholders in the circumstances. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable. We note current service charge expenditure in respect of waking watch which will not be required when the work is completed.
24. We conclude it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) whether prospective or retrospective.
25. Nothing in this determination or order shall preclude consideration of whether the Applicants may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

26. The Applicants are dispensed from complying with the consultation requirements in respect of the work specified in the applications.

L J Bennett
Tribunal Judge
11 April 2019