



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

- Case Reference** : **MAN/00BS/LDC/2018/0026**
- Property** : **Various properties across the Stockport MDC Portfolio**
- Appellant** : **Stockport MBC (represented by Miss L James)**
- Respondents** : **Various Leaseholders and Tenants**
- Type of Application** : **Application under Section 20ZA Landlord and Tenant Act 1985**
- Tribunal Members** : **Mr J R Rimmer (Chairman)
Mrs S Hopkins**
- Date of Decision** : **26th July 2019**
- Order** : **The dispensation sought by the Applicant from compliance with Section 20 Landlord and Tenant Act 1985 is granted**

Application and background

- 1 This is an application under Section 20ZA Landlord and Tenant Act 1985 seeking a partial dispensation from the requirement to fulfil the consultation requirements of Section 20 Landlord and Tenant Act 1985 (further clarified by the Service Charges (Consultation Requirements) (England) Regulations 2003) in relation to what are termed “qualifying works” within that section. The Application is dated 11th July 2018. It contains, amongst other things, an outline of the work likely to be required.
- 2 The Applicant, through its housing provider, Stockport Homes Limited, wholly owned by the Applicant, provides a very large number of housing units of varying types across the Borough of Stockport. Whilst most of these are within tenanted stock, there is a significant number of properties let under long leases under the “Right to Buy” scheme. They represent about 4% of approximately 11,500 homes provided by the Applicant. They are those where the right to buy has not encompassed a disposal of the freehold, more generally flats rather than houses.
- 3 The rolling programme of condition surveys carried out by Stockport Homes has brought about a plan for renewal work to roofs, facias, soffits, canopies and windows, some of which work is being proposed for some 200 properties let on long leases. These are works referred to as works within a capital programme and the precise nature of the works is set out in Appendix 2 to the Applicant’s statement of case.
- 4 These leaseholders are entitled to be taken through the consultation process provided for by Section 20 Landlord and Tenant Act 1985, in respect of which the landlord may seek to claim an exemption from all or part of the process under Section 20ZA. Often such applications are retrospective, after Section 20 has not been complied with, but some, as is the case here, are proactive, the Applicant believing there is a good case to be made to avoid some of the consultation requirements.
- 5 A small number of formal objections to the application have been received from leaseholders. Apparently, the initial condition survey carried out was a desktop one, based upon the ages of the properties and likely condition. One objection has been withdrawn when it became apparent that a more formal survey will be carried out to the properties in due course to ascertain more precisely what is required.
- 6 The Application is only for a partial exemption from the consultation requirements. The Applicant seeks to be able to serve only a single notice, a “Notice of Landlord’s estimates” referring only to one estimate, from one contractor (Three sixty SCG, itself a subsidiary of Stockport Homes Limited). The effect would be to dispense with 4 stages of the process:

- (1) The notice of intention to carry out qualifying works
 - (2) The right of the leaseholders to nominate a contractor
 - (3) The need for two, or more, estimates
 - (4) The need to give reasons for the eventual choice of contractor.
- 7 Some objectors indicated that they would wish the Tribunal to conduct a hearing to consider the Application and one was arranged for Tuesday 26th March 2019 at the tribunal offices in Manchester. There was no attendance at that time by any leaseholders, although the tribunal was aware that 2 specific objections had been resolved prior to the hearing.
 - 8 It subsequently became apparent that one objector had wished to attend, but had not received the notice of hearing as the tribunal office had assumed two leaseholders with the same surname and initial were one and the same person. In the circumstances it was clear that one leaseholder had therefore denied the right to be heard and it was appropriate for the matter to be re-listed and in due course a final hearing was arranged for 17th July 2019.

The Law

- 9 Section 18 Landlord and Tenant Act 1985 defines both a “service charge” and also “relevant costs” in relation to such charges whilst Section 19 of the Act limits the amount of those costs that are included in such charges to those which are reasonably incurred in respect of work which is of a reasonable standard.
- 10 Section 20 of the Act then proceeds to limit the amount of such charges that may be recoverable for what are known as “qualifying works” unless a consultation process has been complied with. By Section 20ZA of the Act qualifying works are any works to the building or other premises to which the service charge applies and the relevant costs would require a contribution from each tenant of more than £250.00.
- 11 Section 20ZA(1) particularly provides that:
“ Where an application is made to the appropriate 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.”
- 12 As this is an application to dispense with the need to comply with the requirements it is not necessary for the Tribunal to set out here in detail

those requirements but they may be found in Regulation 6 of the Regulations referred to in paragraph 1, above.

Determination

- 13 The Tribunal considered the matter at the further hearing mentioned above. It was particularly appropriate that a hearing had been requested as the application is one that should have some external oversight, in view of the close connection between the various bodies connected with the planned works, notwithstanding that their relationships exist at arms-length, and the Applicant's representatives could provide further information requested by the Tribunal at that time. It also provided the opportunity to give full consideration to the observations made by those leaseholders who had taken part in the proceedings.
- 14 It was also very clear to the tribunal that Mr M Hall, the leaseholder originally deprived of the information as to the first hearing, had very serious concerns that this matter should be aired and considered as fully as possible in view of his own personal experiences of engagement with the Applicant.
- 15 On the evidence made available to it the Tribunal is able to make the determinations set out below.
- 16 Work is likely to be required to the items referred to in paragraph 3, above. This is established by the stock condition survey carried out by the Applicant and the age of the properties in question. Mr Hall made the point quite forcibly that this was a very wide approach and there were certainly some properties where either work was not yet required, or could be avoided had more remedial work been carried out earlier.
- 17 It may well be the case that Mr Hall has valid issues that could be raised in relation to past service charges and the reasonableness of these works, but those are not matters that an application under Section 20ZA is concerned with.
- 18 The Applicant has demonstrated good reasons to seek a common contractor to deal with all the required works relating to both secure and long leasehold lettings, greatly extending the project management process that would be required. Mr Hall disagrees with this and would prefer to see a full tendering process to ensure competitiveness.
- 19 A schedule of anticipated cost savings, compared budgeted costs with those of an external contractor, has been provided (the cost benefit analysis on page 19 of the Applicant's bundle). Works already carried out in respect of properties occupied by secure tenants suggest further savings

- are to be made. Mr Hall suggests that these might be based upon costs that are high in the first place. The Tribunal accepts that within the programme as the Applicants have set about putting into place the evidence of costs savings is clear. Again, the remedy if costs still appear to leaseholders to be unreasonable is to challenge them in an appropriate manner.
- 20 To the Tribunal's mind this finding is backed up by customer satisfaction with work done by three sixty SCG, in relation to this and previous works, which is high, from both the tenants' perspective and that of Stockport Homes.
- 21 There is nothing apparent to the Tribunal that suggests any prejudice to the leaseholders in proceeding without the early elements of the formal consultation process. There is clear evidence that advantages are likely to outweigh disadvantages.
- (1) The evidence of savings through contracting with three Sixty SCG, which are being passed on to the leaseholders, compared with recent experience of other contractors, is good.
 - (2) Although there is provision in the current estimate for management costs of 7% this would be reduced considerably if the plan to use one contractor was accepted and the Application successful.
 - (3) Opportunity will still be available for objections to be raised in respect of specific work on specific properties following the issuing of the Notice of Landlord's Estimate in a similar manner to what has happened thus far in respect of some properties.
 - (4) The project can be subject to retrospective review, as mentioned above, if there is a suggestion that works, or costs, are unreasonable through the Section 19 regime in respect of service charges.
- 22 In the circumstances the Tribunal is satisfied that it is reasonable to dispense with the requirements referred to in the Application that would have been necessary to comply with section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
- 23 The Tribunal notes what Mr Hall says of himself, that he is not someone to give up easily if he feels wronged. The Tribunal would suggest however that if an application of a more general nature in relation to service charges is made, then attention is paid to any directions that are given, to any party or parties, as to service of statements, evidence and any time limits with which compliance is required

J R RIMMER (CHAIRMAN)

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