



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

Case Reference : **MAN/00BY/LDC/2019/0017**

Property : **96/98 Huskisson Street,
Liverpool, L8 7LS**

Applicant : **Liverpool Housing Trust**

Representative : **Onward Homes**

Respondents : **Various Leaseholders – see annex**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Members : **Judge P Forster
Mr W A Reynolds MRCIS**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **24 July 2019**

DECISION

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Decision

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to replacement of water booster pumps and associated electricity control panels at 96/98 Huskisson Street, Liverpool.

Reasons

Background

1. An application was received by the First-tier Tribunal under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made on behalf of Liverpool Housing Trust of 12 Hanover Street, Liverpool, L1 4 AA (“the applicant”) in respect of 96/98 Huskisson Street, Liverpool, L8 7 LS (“the property”) which are Victorian houses have been converted into flats. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern urgent works to repair the electrics and water pumps which are part of the heating system that serves the Property. Advice was received that it was more cost-effective to replace booster sets both properties; including new pumps and electric motor control panels. The cost of the work was £11,925.60, to be paid in part out of the sinking fund which at 28 February 2019 was budgeted to amount to £8,442.92.
5. On 3 May 2019 the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. In response to directions, the Applicant’s representative provided written submissions and documentary evidence in support of the application. Copies of these were provided to each Respondent and no submissions or objections were received from the Respondents though one of the respondents, with support from another lessee, commented that they felt there may be a wider underlying problem with the

plumbing at 98 Huskisson Street as they identified that the pumps had broken on many occasions and they questioned how many times they had been replaced since 2006.

6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that, it was necessary to undertake these works quickly to adequately protect the occupants of the Property, particularly those in the top floor flats because of a lack of water pressure. The Applicant proceeded with the works as soon as possible to resolve the problems. It asks the Tribunal to grant retrospective dispensation in respect of these works, which it considered to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would have entailed.

The Law

8. Section 18 of the Act defines what is meant by "service charge". It also defines the expression "relevant costs" as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

9. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either– (a) complied with in relation to the works ... or

(b) dispensed with in relation to the works ... by the appropriate tribunal.

10. "Qualifying works" for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

11. Section 20ZA(1) of the Act provides:

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. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:
 - give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
 - obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
 - make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
 - give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Conclusions

13. The Tribunal must decide whether it is reasonable for the works to proceed without the Applicant first complying in full with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
14. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.

15. It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should and could not have been delayed. In considering this, the Tribunal must consider the prejudice that was caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
16. In the present case, there is no doubt that the works were necessary and pressing for the occupiers of the Property. We find that it was reasonable for these works to have proceeded without the Applicant first complying with the Section 20 consultation requirements. The balance of prejudice favours permitting such works to have proceeded without delay.
17. In deciding to grant a dispensation, we have had regard to the fact that no objections were raised by the Respondent leaseholders with several leaseholders identifying that they considered the ongoing issues with the availability and pressure of the water to require urgent attention.
18. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant a dispensation from the consultation requirements. This decision should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

24 July 2019
Judge P Forster

Annex

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|---------------------------------|---|
| 1. Mr Rhoden | flats 2 & 3, 96 Huskisson Street |
| 2. Ms Kavangh | flats 4 & 6, 96 Huskisson Street |
| 3. Dr Young, Dr Nik & Dr Jacobs | flat 1, 96 Huskisson Street, and
flat 1, 98 Huskisson Street |
| 4. Dr Jones | flat 2, 98 Huskisson Street |
| 5. Mrs Hughes | flat 3, 98 Huskisson Street |