



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

Case Reference : **MAN/00DA/LDC/2019/0018**

Property : **Candle House
1 Wharf Approach
Leeds
LS1 4GH**

Applicant : **Granary Wharf (Candle House)
Management Limited**

Representative : **Watsons Property Management**

Respondents : **The leaseholders of the Property
(see Annex)**

Representative : **N/A**

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

Tribunal Member : **Judge J Holbrook**

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

Date of Decision : **25 June 2019**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to remedial works to the two lifts (and lift shafts) within the Property.

REASONS

Background

1. On 23 April 2019, an application was made to the First-tier Tribunal (Property Chamber) (“the 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 by Granary Wharf (Candle House) Management Limited, the management company for Candle House, 1 Wharf Approach, Leeds LS1 4GH (“the Property”). The Respondents to the application (who are listed in the Annex hereto) are the long leaseholders of the 159 residential apartments within the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern urgent specialist remedial works to the two lifts (and lift shafts) within the building.
5. On 13 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 I have therefore dealt with this matter on the papers in the absence of the parties. Documentary evidence in support of the application was provided on behalf of the management company. However, whilst some Respondents gave notice of their intention to participate in the proceedings, none of them submitted a statement of case or made representations as to whether or not the application should be granted.
6. I did not inspect the Property but I understand it to comprise a twenty-one-storey purpose-built residential development in Leeds city centre, with commercial premises at ground floor level.

Grounds for the application

7. The Property has two lifts serving its twenty residential floors. However, the 'right hand side lift' is currently out of service pending resolution of a dispute involving the original developer following multiple lift failures. Following a specialist inspection of the 'left hand side lift', the management company has been advised that there are defects in the top of the lift shaft walls which present a small risk of catastrophic failure. The Applicant's case is that this matter needs to be addressed urgently by adding structural PFC beam restraints to support both the lift shaft walls and the lift head motor. Similar works are also required in respect of the right hand side lift (these emergency works are distinct from those which are needed anyway to bring that lift back into service). The Applicant's view is that the urgency of the health and safety issues is such that the emergency repair works should now be undertaken immediately in a single phase in conjunction with the other necessary repairs. No information has been provided as to the anticipated cost of the works.

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. I must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. 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.
14. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the lifts are operational and safe and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. I must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out

the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

15. In the present case, it is clear that there is an urgent need for the lifts to be brought back into safe operation. Although the risk of catastrophic failure is said to be “very small”, any such risk must obviously be taken extremely seriously and must be addressed as soon as possible. I therefore find that the balance of prejudice favours permitting remedial works to proceed without delay.
16. I also note that, whilst the statutory consultation requirements have not been complied with, the Respondents are said to have been kept up to date over the last two years in respect of ongoing discussions regarding the lifts. I also note that none of the Respondents have objected to the dispensation application.
17. The fact that I have granted dispensation from the consultation requirements should not be taken as an indication that I consider that the amount of any service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. As stated, I have been given no information about the likely costs of the proposed works and I make no findings in that regard.

ANNEX

List of Respondents

| Name | Address |
|---------------------------------------|-------------------------------|
| Together Housing Association | 1 – 12 & 14 – 16 Candle House |
| TMFP | 13 Candle House |
| Mr C J Wilson | 17 Candle House |
| Mr S J Hanson | 18 Candle House |
| Mr D W Holmes | 19 Candle House |
| Mrs H M & Mr N B Tatum | 20 Candle House |
| Mr A Thompson & Ms E Collins | 21 Candle House |
| Ms M Finkill | 22 Candle House |
| Mr J & Mrs S Hensch | 23 Candle House |
| Dr V K Sinha & Mrs K C Baguant-Sinha | 24 Candle House |
| Ms E Strutt | 25 Candle House |
| Ms E C Wright | 26 Candle House |
| Mr M Widdowfield & Ms E Travis | 27 Candle House |
| Mr D M & Mrs S H Kemeny | 28 Candle House |
| Mr D & Mrs S Wright | 29 Candle House |
| Mr R L Wray | 30 Candle House |
| Mr M Edwards | 31 Candle House |
| Mr L Murdoch | 32 Candle House |
| Apex Electrical Engineers Limited | 33 Candle House |
| Ms M I Majoros | 34 Candle House |
| Mr P E & Mrs J M Brook | 35 Candle House |
| Ms D Fawcett-Walsh | 36 Candle House |
| Mr P J Considine | 37 Candle House |
| Mr M & Mrs H Bradbury | 38 Candle House |
| Mr J W R Walker | 39 Candle House |
| Mr E C P Biggs | 40 Candle House |
| Mr D Whitworth | 41 Candle House |
| Ms J M Walsh | 42 Candle House |
| Mr V & Mrs L C M Vernals | 43 Candle House |
| Mr M J Essam | 44 Candle House |
| Mr S R Furnivall | 45 Candle House |
| Mr N Abercrombie | 46 Candle House |
| Mr R S Popat | 47 Candle House |
| Mr A D H Schofield & Ms D K M L Jones | 48 Candle House |
| Mr M R W & F J Hurley | 49 Candle House |
| Ms F Cumiskey | 50 Candle House |
| Mr J Marchant | 51 Candle House |
| Ms A Symeonidou | 52 Candle House |
| Ms B L S Smith | 53 Candle House |
| Mr R C K Wilson | 54 Candle House |
| Mr M H Gilyead | 55 Candle House |
| Mr R T T Mellor & Ms J E B Seach | 56 Candle House |
| Mr D Gregory & Mrs S Hubbard | 57 Candle House |
| Ms D Y Lai | 58 Candle House |
| Miss R J Edlin & Mr S J Dam | 59 Candle House |
| Mr J A P & Mr T Wynn | 60 Candle House |

List of Respondents (continued)

| Name | Address |
|----------------------------------|------------------|
| Mr N Muraleedharan | 61 Candle House |
| Mr A R Kinsey | 62 Candle House |
| Mr M J Taylor | 63 Candle House |
| Ms E L Miller | 64 Candle House |
| Mr M E Roberts | 65 Candle House |
| Mr J R Harris | 66 Candle House |
| Mr C Gilmartin | 67 Candle House |
| Mr D L Hartley | 68 Candle House |
| Mr N Nishant & Mrs L Petjukevica | 69 Candle House |
| Mr Y Lapid | 70 Candle House |
| Mr B A Masood-Al-Farooq | 71 Candle House |
| Mr M J Smith | 72 Candle House |
| Mr D & Mrs J Horton | 73 Candle House |
| Mr S W Norbury | 74 Candle House |
| Mr C D White | 75 Candle House |
| Mr J H Tippling | 76 Candle House |
| Mrs J S Murira | 77 Candle House |
| Mrs O D Williams | 78 Candle House |
| Mr E A B Nevard | 79 Candle House |
| Ms A G A Howse | 80 Candle House |
| Mr M Wigfield | 81 Candle House |
| Ms L J Brunt | 82 Candle House |
| Mr S Chadwick & Mr A Lake | 83 Candle House |
| Mr A O'Reilly | 84 Candle House |
| Mr T J Clarke | 85 Candle House |
| Mr A L Lista | 86 Candle House |
| Mr R J & Mrs J McAra | 87 Candle House |
| Mr M F O'Shaughnessy | 88 Candle House |
| Mr P Brook | 89 Candle House |
| Mr J T Porter | 90 Candle House |
| Mr R Malik | 91 Candle House |
| SEJ Investments Limited | 92 Candle House |
| Mr T Wynn | 93 Candle House |
| Mr P A & Mrs T M Petersons | 94 Candle House |
| Mr A Gibson | 95 Candle House |
| Mr S R N & Mrs J A Danks | 96 Candle House |
| Mr K D Lawrie | 97 Candle House |
| Mr T R N & Mrs C A Tolcher | 98 Candle House |
| Mr D L Hartley | 99 Candle House |
| Mr L J Murphy | 100 Candle House |
| Mr S Woowat & Ms K Wood | 101 Candle House |
| Mr S J Wood | 102 Candle House |
| Mr J R & Mrs J Barnes | 103 Candle House |
| Mr R J & T W Pendriss | 104 Candle House |
| Mr J R & Mrs M E Armstrong | 105 Candle House |
| Mr A N Young | 106 Candle House |

List of Respondents (continued)

| Name | Address |
|---------------------------------|------------------|
| Mr R N Wilson & Ms G L Metcalfe | 107 Candle House |
| Mr T & Mrs S H Kemeny | 108 Candle House |
| Mr A & Mrs J Stretton | 109 Candle House |
| Ms S M Todd | 110 Candle House |
| Mr T A Ellidge | 111 Candle House |
| Mr M J Guess | 112 Candle House |
| Mr J L Moyce | 113 Candle House |
| Mr W J Evans | 114 Candle House |
| Mr D M H Hewlett | 115 Candle House |
| Mr A F Kadar & Ms S De Pippo | 116 Candle House |
| Ms L J Harrison | 117 Candle House |
| Mr E Soegyanto & Ms L Yao | 119 Candle House |
| Mr P & Mrs I Chainani | 120 Candle House |
| Ms A F Parrish | 121 Candle House |
| Mr D M Brennan | 122 Candle House |
| Mr A Ajaib | 123 Candle House |
| Mr S Morrow | 124 Candle House |
| Mr E Roper & Miss Z Tariq | 125 Candle House |
| Mr N M Walker | 126 Candle House |
| Mr S J & Mrs J M B Hopkins | 127 Candle House |
| Mr J W Summerbee | 128 Candle House |
| ARHO-HPD Properties Limited | 129 Candle House |
| Mr A Kinnear & Mrs J Webster | 130 Candle House |
| Mr M Drysdale | 131 Candle House |
| Ms S Cogan | 132 Candle House |
| Mr J P Hill | 133 Candle House |
| Mr A & Mrs R E Lorman | 134 Candle House |
| Ms L Ramdin | 135 Candle House |
| Mr M J Gould | 136 Candle House |
| Ms R A Pogmore | 137 Candle House |
| Ms F V Nelson | 138 Candle House |
| Mr G M Grimes | 139 Candle House |
| Mr R Nixon | 140 Candle House |
| Ms T A & Mr K P Breedon | 141 Candle House |
| Mr G Fuller | 142 Candle House |
| Ms R M Gill | 143 Candle House |
| Mr R & Mrs R Burgess | 144 Candle House |
| Mr S H & Mrs S J Ralph | 145 Candle House |
| Mr A J & Mrs S E Clark | 146 Candle House |
| Mr R J & Mrs J McAra | 147 Candle House |
| Mr V L & Mrs I Pujara | 148 Candle House |
| Ms N S Hondow | 149 Candle House |
| Ms T Stoppani | 150 Candle House |
| Mr N C Payne | 151 Candle House |
| Mr S & Mrs I Cumming | 152 Candle House |
| Trustees of the Ervin Powell | 153 Candle House |

List of Respondents (continued)

| Name | Address |
|------------------------------------|------------------|
| Ms L Carter | 154 Candle House |
| Mr P W Knowles | 155 Candle House |
| Mr J G H Tan | 156 Candle House |
| Mr B E Mouat & Ms Y Leia | 157 Candle House |
| Ms J A Wick | 158 Candle House |
| Mr R & Mrs J E Garford | 159 Candle House |
| Mr T W A F Gibbs & Ms J C D Aylard | 160 Candle House |