



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

Case Reference : **MAN/00BU/LDC/2019/0028**

Property : **2 Fulwood Park
Liverpool
L17 5AG**

Applicant : **2 Fulwood Park Management
Company Limited**

Representative : **Guy Williams Layton**

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

Representative : **N/A**

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

Tribunal : **Judge J Holbrook**

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

Date of Decision : **25 September 2019**

Date of Determination : **26 September 2019**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works to remedy dry rot within the Property.

REASONS

Background

1. On 21 June 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 on behalf of 2 Fulwood Park Management Company Limited and concerns 2 Fulwood Park, Liverpool L17 5AG (“the Property”). The Respondents to this application are the respective long-leasehold owners of the eight residential apartments which comprise the Property, whose details are set out in the Annex to this decision.
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 remedying of dry rot. It is understood that those works have been completed within the last 12 months or so.
5. On 30 July 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 determined the application in the absence of the parties. Written submissions and documentary evidence in support of the application were provided on behalf of the Applicant. No representations have been received from any of the Respondents.
6. I did not inspect the Property but I understand it to comprise a 19th century mansion house which has been converted into eight residential apartments.

Law

7. 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.

8. 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.*

9. “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).

10. 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.

11. 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.

Grounds for the application

12. The Applicant's case is that dispensation should be granted in respect of the work that has been undertaken to treat and replace dry rot found in Apartments 3 and 4. The problem was identified in July 2018 and was the subject of an EGM held by the management company in September 2018. At that EGM, it was agreed that remedial works should be carried out, and this was subsequently done at a cost of £2,750 per leaseholder.

Discussion and conclusions

13. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord 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.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted.
15. I am satisfied that no such prejudice has been demonstrated in this case: it has not been shown, for example, that the works would, or could, have been procured more cheaply had those requirements been complied with. Nor has it been argued that any of the Respondents would have nominated an alternative contractor from whom an estimate for the works could have been sought. Indeed, none of the Respondents have objected to the application being granted. Moreover, I note that the Respondents have been consulted about the works (at the EGM) and that they were in favour of them going ahead.
16. I therefore conclude that the application must succeed and that dispensation must be granted. Nevertheless, it should be noted that the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I 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 (or any of them). I make no findings in that regard.

Annex A
(List of Respondents)

Angela Chakrabarti
Paul Edwards & Judy Edwards
Helen Millne
Lana Toma
Nathan Chesney & Rosie Chesney
Carl Cockram
Michael Lavalette & Laura Penketh
Joanna Moss