FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CJ/ LDC/2020/0009**
Property	**:**	**Grove House** **The Grove** **Gosforth** **Newcastle upon Tyne** **NE3 1N4**
Applicant	**:**	**Grove House Residents (Gosforth) Limited**
Respondents	**:**	**Various leaseholders** **(See Annex)**
Representative	**:**	**N/A**
Type of Application	**:**	**Landlord and Tenant Act 1985** **- section 20ZA**
Tribunal Members	**:**	**Judge S Duffy**
Date and venue of Hearing	**:**	**Determined without a hearing**
Date of Decision	**:**	**28 February 2020**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in respect of the reconditioning of the main drive to the lift. The Tribunal has shortened the time limit for making an application for permission to appeal against this decision to 7 days.

REASONS

Background

1. On 21 February 2020 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 relates to Grove House, The Grove, Gosforth, Newcastle upon Tyne NE3 1N4 ("the Property") and was made the Applicant Grove House (Residents) Limited.

3. The Respondents to the application (listed in the Annex hereto) are the long leaseholders of the residential flats within the Property.

4. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.

5. On 21 February 2020 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 accordingly convened in the absence of the parties on the date of this decision to determine the application.

6. The application form stood as the Applicant's Statement of Case. No submissions were received from any of the Respondents.

Grounds for the application

7. The works in respect of which a dispensation is sought concern replacement or reconditioning of the main drive to the lift in the block. In the application the Applicant explains the reasons for, and nature of, the works in the following terms:

> "The lift is currently out of order and requires the replacement or reconditioning of the Main Drive. The cheapest option, reconditioning, costs £4.5K. The section 20 limit on this block is £2k"

The Applicant goes on to explain that one of the leaseholders is disabled and relies upon the lift to enter and leave the building. The lift failure is causing this leaseholder considerable difficulties.

8. The Applicant states in paragraph 10 of the application form that reconditioning of the main drive will cost £4,500 and that the leaseholders have agreed to proceed with the reconditioning of the drive. However, although the Applicant has not provided any documentation to that effect, the Tribunal does not consider this sum to be so material as to seek additional clarification given the extreme urgency of the application.

Law

9. Section 18 of the Act defines the term "service charge". It also defines the term "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.*

10. 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.*

11. "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).

12. 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.*

13. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. Briefly, however, the consultation requirements 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

14. The Tribunal must decide whether it is reasonable for the proposed works to proceed without the Applicant first complying with the consultation requirements. Those requirements set out in secondary legislation thus ensuring that there is a degree of transparency and accountability when a landlord (or manager) decides to undertake qualifying works. The requirements ensure that leaseholders have knowledge of, and can comment on, proposals for major works before decisions are taken on those proposals. Accordingly, it is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them.

15. Accordingly, for it to be appropriate to dispense with the consultation requirements, there must be a good reason why the works cannot be delayed until the requirements have been complied with. In deciding whether there is a good reason, the Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. The Tribunal must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether the balance 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 such as this in which there is an urgent need for remedial action, or where all the leaseholders consent to the grant of a dispensation.

16. In the present case there is a good reason why the works cannot be delayed. The lift is inoperable thus creating great difficulties for at least one of the leaseholders who is disabled. The Tribunal also notes that all the leaseholders have had the opportunity to make submissions in respect of this this application but have chosen not to make any.

17. Accordingly, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in respect the reconditioning of the main drive of the lift as set out in the application form. However, it is important for the parties to note that this dispensation should not be taken as an indication that the Tribunal considers that the costs of the work or 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. The Tribunal makes no findings in that regard.

18. Given the urgency of the application, the Tribunal is minded to reduce the period in which any application for permission to appeal under rule 52 and 52(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") must be made. Accordingly, in accordance with its powers under rule 6(3)(a) of the Rules the Tribunal hereby shortens time limit for making an application for permission to appeal against this decision from 28 days to 7 days.

JUDGE S. J. DUFFY

ANNEX

List of Respondents (as provided by the Applicant)

Mr Adrian McElhinney	116 Inskip
Mr Brogan	118 Inskip
S Blain & G Dobson	120 Inskip
R Home	122 Inskip