FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BN/LSC/2020/0023**
Property	**:**	**27 Vantage Quay, 3 Brewer Street, Manchester M1 2EN**
Appellant	**:**	**Jason Paul Timmins**
Respondents	**:**	**Vantage Quay Manchester Limited Represented by Shoosmiths LLP**
Type of Application	**:**	**Applications under (1)Section 27A landlord and Tenant Act 1985 (2)Section 20 Landlord and Tenant Act 1985 (3)Section 20C Landlord and Tenant Act 1985 (4)Para 5a, Schedule 11 Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Judge J R Rimmer Mr K K Kasambara**
Date of Decision	**:**	**27 July 2020**

DECISION

Order : **The Respondent has complied with the consultation requirements of section 20 Landlord and Tenant Act and given appropriate notice in writing to the Applicant at each stage of the process.**

Application and background

1 This is an application originally relating to four distinct aspects of the landlord and tenant relationship between the parties arising under a lease between City Lofts (Piccadilly) Limited (1), Vantage Quay Manchester Limited (2) and Warren Blackett (3) for a lease of flat 27, Vantage Quay, granted for a period of 999 years from 1 January 2002 at an initial rent of £350.00 per year.

2 The Applicant is the current leaseholder and the Respondent is the management company currently providing the services for the proper running of the development at Vantage Quay. It appears the company contract the management to an organisation by the name of Urban Bubble.

3 By common consent between the parties, fire safety works have been required to the building and these have been carried out at reasonable cost and to a reasonable standard.

4 Those works are qualifying works that require the landlord/management company to fulfil the consultation requirements of Section 20 Landlord and Tenant Act 1985 (further clarified by the Service Charges (Consultation Requirements) (England) Regulations 2003) whereby a process is put in place for informing leaseholders of what is proposed, the tendering and quotation process, input by the leaseholders and selection of the final contractor.

5 Failure on the part of the landlord/management company to comply with the requirements has a potential for significant financial disadvantage for them, in that the amount of the costs recoverable from each leaseholder may be limited to £250.00. The actual cost has been £897.95 per leaseholder.

6 The Applicant alleges that the consultation process has not been complied with, as notice of the process has not been provided correctly, therefore he seeks a number of orders to remedy what he sees as the imposition of a financial burden upon him that he may legitimately challenge.
(1) An order that the consultation requirements of Section 20 landlord and Tenant Act 1985 ("the Act) have not been complied with.
(2) An order under Section 27A of the Act, that the service charge payable for the fire safety works is limited to £250.00

(3) An order under Section 20C of the Act that any professional or other fees incurred by the Respondent in these proceedings should not be added to future service charges and

(4) Any additional costs imposed on the Applicant by the Respondent in relation to pursuit of payment should not be recoverable as administration charges. Such an order being possible under Schedule 11, paragraph 5A Commonhold and Leasehold Reform Act 2002.

7 A case management conference was held but telephone on 23 April 2020 before a Deputy Regional Judge of the Tribunal where it became apparent that the issue between the parties related to the manner in which the consultation process was undertaken by Urban Bubble on behalf of the Respondent. The Deputy Regional Judge therefore provided directions to the parties to lead to a determination by a Tribunal of this preliminary issue.

8 It is the Applicant's contention that the Section 20 process did not comply with Section 7 Interpretation Act 1978 as to correct postal service of the documents relating to any of the relevant stages of the process. The Respondent is satisfied that the documents were properly despatched.

The Law

9 Section 20 of the Act provides the framework for the consultation process for qualifying works (those likely to cost each relevant tenant in excess of £250.00) such as the fire safety works carried out in this case. They are supplemented by the Service Charges (Consultation Requirements) (England) Regulations 2003,

10 Part 2 of Schedule 4 to those Regulations applies to the works at Vantage Quay and provide for the process to be carried out
Paragraph 8 requires that :

(1) The landlord shall give notice in writing of his intention to carry out qualifying works –
(a)To each tenant
(b)…

Sub -paragraph (2) sets out the required contents of the notice and subsequent paragraphs provide the process for the making of observations by a tenant, nominating a contractor, viewing proposals, being notified of tenders and informed of the placement of the contract.

11 It may be noted that within the relevant paragraphs of Part 2 of Schedule 4 there are at times references to "giving notice in writing" but elsewhere merely "supplying" is used. The Tribunal does not consider that this affects the point being made by the Applicant in relation to the giving of notice where that is the requirement.

12 Section 7 Interpretation Act 1978 provides
"Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then unless the contrary intention appears the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. "

Evidence and submissions

13 The Applicant makes his case on the ground that there is no evidence that service of notice of the consultation process has been provided. The copy documents now supplied by both the Respondent and the Applicant are generic in their nature. The Respondent, or its agent Urban Bubble, did not post the letters and enclosures relating to consultation process directly to the Applicant's address for correspondence. Instead, they used a third party, Docmail, by which means an overarching letter and consultation notice was transmitted electronically to this third party and it, in turn, then printed documents for each leaseholder and then posted them in a bulk posting.

14 There would appear to be no doubt that the correct address for the Applicant's correspondence was available to Urban Bubble and Docmail, given the correspondence from the previous year, and shown to the Tribunal, concerning the appropriate correspondence address.

15 The Applicant suggests that the generic evidence provided by the Respondent is insufficient to prove service of the consultation notice sufficient to satisfy the requirement to "giving notice in writing" as required by the Consultation Regulations. He backs this up by the observations he makes regarding a defect in the process used by the Applicant whereby a page is missed from the original mailing, backing up the view that the process is defective. The Respondent appears to accept, by virtue of subsequent correspondence generated by Urban Bubble that there was a page missing from the original documentation. It suggests that the evidence thereafter of the correction of the error and re-sending the documentation is further evidence of the robustness of the system.

16 The Respondent provides further support for these suggestions with a virtual paper trail of what is provided to Docmail at the various stages of the consultation process and how it is dealt with by that third party and despatched to the intended recipients, effectively by post on the next working day following receipt. It cannot provide copies of individual documents addressed to the Applicant and has generated copies after the event. The Tribunal considers that this done to illustrate the process and indicate what would have been sent out. For the Respondent it is

suggested that the evidence of the process is sufficient to satisfy the Tribunal that notice has been given to the Applicant correctly.

Determination

17 Both parties consented at the case management hearing to the determination of the matter by consideration of the papers generated by the directions in that hearing and the Applicant's applications.

18 The Tribunal is of the opinion that the Applicant bases his case upon a fundamental misconception as to the meaning and effect of Section 7 Interpretation Act 1978. What Section 7 does is provide certainty, in those situations where postal service is authorised by statute, as to when the relevant documents are deemed to have been served. It provides certainty in relation to two matters. Firstly, as to the date upon which any relevant subsequent timescales begins. Secondly, as to the receipt of the document duly sent; unless the contrary is proved in relation to both the sending and the receipt. It therefore recognises that although a document may have been despatched in an appropriate manner it is nevertheless possible for it not to have been received.

19 It places the burden upon the intended recipient to show it has not been despatched or received. In the absence of any evidence that it has not been received, the clear and obvious inference is that it has.

20 However, Section 7 has no direct application in this case. The Landlord and Tenant Act 1985 does not provide, in relation to the Section 20 notice, any requirement, or authorisation, that it be sent by post. It need merely be given in some form of writing. That writing can therefore be in any number of ways. The issue is whether, on balance, it has been sent and received.

21 The Tribunal notes, having regard to all the evidence submitted by either party:

(1) The Applicant makes no suggestion that the relevant consultation documents have not been received, merely that the Applicant cannot prove they have been sent.
(2) The Respondent has the Applicant's correct address.
(3) The Respondent did not despatch the documents itself or obtain any proof of posting
(4) It does use a system that appears to have a robustness that should be sufficient to secure despatch and receipt and that is sufficient to bring to the Respondent's attention an error that is then corrected.
(5) It would appear from the copy documents supplied by the Respondent that elsewhere, in relation Vantage Quay, those documents were despatched and received in a manner that enabled other leaseholders to engage in the consultation process.

(6) The Tribunal notes, but does not give any weight to, the fact that many copy documents supplied are generic in their nature, rather than specifically addressed to the Applicant. The Tribunal suspects this is intrinsic to the nature of the system used.

22 In the above circumstances the Tribunal is satisfied that where required the documents relating to the consultation process were given in writing and received by the Applicant at his correct postal address.

23 The Tribunal has therefore dealt with the matter it was asked to consider. It notes that it would appear that this would settle the matter of what amount the Applicant should be asked to pay by the Respondent in respect of the fire safety works, given the indication recorded at the case management hearing that they are otherwise regarded as being reasonably incurred at reasonable cost.

24 There still remain the applications in respect of any costs of these proceedings Under Section 20C of the Act and any administration charges under the Commonhold and Leasehold Reform Act.

25 This decision will be accompanied by a notice in respect of the right to appeal the decision within 28 days. In the circumstances the Applicant should have the time within which to indicate any wish to pursue those additional matters and, if necessary, the Tribunal will provide further directions.

JUDGE J R RIMMER
27 July 2020