



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

Case Reference : **CAM/11UF/LDC/2019/0025**

Property : **1 – 26 Mahoney Court, Oakridge Road, High Wycombe, Bucks HP11 2NH**

Applicants : **Red Kite Community Housing**

Respondents : **The Long Leaseholders listed in the Application (16, 17, 21 and 26 Mahoney Court)**

Date of Application : **6th September 2019**

Type of Application : **To dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 pursuant to Section 20ZA**

Tribunal : **Judge JR Morris**

Date of Directions : **23rd September 2019**

Date of Decision : **5th November 2019**

DECISION

© CROWN COPYRIGHT 2019

Decision

1. The Tribunal determines that it is reasonable to dispense with all the consultation requirements referred to in section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 4 Part 2 of the Service Charges (Consultation requirements) (England) Regulations 2003.

Reasons

The Application

2. An Application for dispensation from the section 20 consultation requirements in respect of rewiring works to the Property was made on 6th September 2019. Directions were issued on 23rd September 2019.
3. The Directions together with a copy of the Application were sent to the Leaseholders. The Directions stated that the Application would be determined on or after 28th October 2019 based on written representations and without an inspection, unless either party made a request for an oral hearing. No request was received.
4. The Directions required the Leaseholders who opposed the Application to complete and send an attached reply form to the Tribunal and a statement in response to the Application with a copy of the reply form to the Applicant by 11th October 2019. Two Leaseholders opposed the Application, Mr Mike Vickery of 17 Mahoney Court and Miss Jennifer Robertson of 21 Mahoney Court and a summary of their responses is set out below.
5. The Applicants provided a bundle by 25th October 2019 as required by the Directions. This included a copy of a Lease for 21 Mahoney Court dated 4th September 2000 between Wycombe District Council (1) and Jennifer Robertson (2) for a term of 125 years from 8th April 1991 confirming the Respondents are long leaseholders.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
7. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure in the Regulations is summarised in Annex 2 of this Decision and Reasons.
8. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

The Evidence

9. The Applicant has submitted written grounds for the Application.
10. The Property is a two-storey block of 26 self-contained flats, four of which, numbers 16, 17, 21 and 26 are held on long leases.
11. Due to the electrical system failing at the Property an Electrical Installation Condition Report was carried out on 26th and 27th August 2019. The report stated that all existing lighting needed to be removed and 39 lighting points needed to be rewired. Emergency lighting needed to be installed throughout the Property and the fuse board and metal trunking adjacent needed to be replaced as it did not conform to current standards.
12. The communal lights, including the emergency lights, had failed their five yearly tests. Therefore the work was considered to be urgent as the failure put residents' health and safety at risk and the Applicants instructed the contractors to carry out the work immediately to remedy the faults and minimise the risk. As a result, there was no time to undertake a section 20 consultation.
13. The total cost of the work including VAT was estimated to be £13,323.36. There are four long leasehold flats which would usually be expected to pay a contribution towards these costs. The contribution is estimated to be £512.44 per flat. The Applicant added that if they were only able to collect £250.00 per flat this would incur a total loss of £1,049.75.
14. Mr Vickery stated in written representations that he agreed that if the electrical system was unsafe it should be asked why it had become so dangerous over the past 5 years since the last inspection. He said that during the past 5 years the rewiring had been upgraded and energy saving lights had been installed throughout the Property. If these works were not up to standard then he submitted that the electrical contractors who installed those works should be charged for the remedial works now being undertaken.
15. Miss Robertson stated in written representations that she did not believe the electrical systems were unsafe. She said that more lights had been installed than necessary and that many of the cables were not in trunking therefore she did not see why trunking was required now. She said that the Leaseholders had paid to have the electrical system upgraded some time ago and questioned why it had deteriorated to a dangerous state within the past 5 years. She said she would like to see evidence of the reports that have been obtained and the works and their cost that have been carried out from 2001 to 2018. She added that she noted some light fittings were being removed to be used elsewhere. She said if they were useable, she did not see why they were being removed.
16. In reply the Applicant said that the objections raised were not relevant to the present Application. The new cable did not require trunking. The fuse box was

open, the existing wiring did not meet current standards and the light fittings were unsafe. It was conceded that some elements of the light fittings might be re-useable but the Applicant would not re-use them once removed.

Determination

17. In determining whether or not dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that “*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*”.
18. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:
Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]
19. The Tribunal noted the objections made by Mr Vickery and Miss Robertson but these relate to the need for the works to be carried out and the extent to which they should contribute to the cost of the works. They do not relate to the extent to which the consultation requirements should be fulfilled and any significant prejudice they may have suffered due to the procedure not having been complied with.
20. In this regard the Tribunal should make it clear that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act.
21. The Tribunal accepted that the works were urgent and that the failure of the electrical system and its unsafe condition put the residents at considerable risk and remedial works needed to be carried out as soon as possible. The Tribunal noted that a qualified and approved contractor was engaged to carry out the work and that there was no significant prejudice to the leaseholders in the consultation procedure not having been followed.
22. Any loss which might be suffered by the Applicant due to dispensation not being granted is not a consideration for the Tribunal in making its determination.
23. The Tribunal determines that it is reasonable to dispense with all the consultation requirements referred to in Section 20 of the Landlord and Tenant

Act 1985 as set out in Schedule 4 Part 2 of the Service Charges (Consultation requirements) (England) Regulations 2003.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 - THE LAW

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made

and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –
 - (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
 - (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
 - (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
 - (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
- a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - b) to obtain estimates for proposed works or agreements,
 - c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) and (7)... not relevant to this application.