



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

**Case Reference** : **MAN/00FF/LDC/2022/0041**

**Property** : **Flats 2, 3, 4 and 7 Fawcett Street, York  
YO10 6BZ**

**Applicant** : **Barbican Gate Management Company  
Limited**

**Representative** : **Watson Property Management Company**

**Respondents** : **The Residential Leaseholders of the  
Property (See Annex)**

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

**Tribunal Member** : **Judge Bennett**

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

**Date of Decision** : **25 October 2022**

**DECISION**

## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising repairs to the sash window pulley systems. This includes a requirement for them to be partially disassembled to enable access.**

## REASONS

### Background

1. On 8 June 2022, 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 Barbican Gate Management Company Limited and relates to premises known as Flats 2, 3, 4 and 7 Fawcett Street, York YO10 6BZ (“the Property”). The Applicant is the management company for the Property. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
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 dispensation is sought comprises the repairs to the sash window pulley systems which includes a requirement for them to be partially disassembled to enable access.
5. I gather that each of the Respondents have been given notice of the application and afforded the opportunity to view the Applicant’s supporting evidence. They have also been provided with a copy of the case management directions issued by the Tribunal on 15 July 2022. The Tribunal accepted that Applicant complied with paragraph 5 of the directions and sent a paper copy of their bundle of documents to each Respondent on 20 July 2022. The directions subsequently required any Respondent who opposed the application to notify the Tribunal of their objection by 10 August 2022. No such notification has been received.
6. I have determined this matter following a consideration of the Applicant’s case, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected.

Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.

7. The Tribunal did not inspect the Property, but I understand it to be a development comprising of two buildings with the works to be carried out in the historic building. The first building is the former York City Sports Club and is a Grade II listed, traditionally constructed building with two floors. The second building is a modern apartment block based over three floors.

### **Grounds for the application**

8. It is submitted that the application has been made to the Tribunal because the Applicant has been unable to obtain an alternative quote for the required works and is therefore unable to adhere to the consultation requirements despite numerous efforts to approach alternative contractors. The Applicant states that they commenced the section 20 consultation process, and a first stage notice was issued, but the Applicant was unable to secure another quote due to the specialist nature of the work. According to the Applicant, these are very rare windows to replace and due to the building being grade II listed, the repair work is specialist in nature, and it is essential that only skilled labourers complete the work. The Applicant advises that these works are urgent and necessary to ensure the windows are operational in each apartment.

### **Law**

9. 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.*

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. 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**

14. The Tribunal must decide whether it was reasonable for the works to go ahead without the Applicant first complying with the full 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. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work. 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.

15. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works could not be delayed until the requirements had 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 occupiers of the Property are not placed at undue risk and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It 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.
16. I accept from the details provided that in the present case there is an urgent need for swift remedial action to ensure that the Property has functioning windows. In reaching this decision, I have had regard to the fact that no objections were raised by the Respondent leaseholders when provided the opportunity to. It is apparent that an estimate cost for the works has been circulated to the Respondent leaseholders and since the Applicant has provided reasoning as to why they are unable to obtain competitive estimates for the costs of the works, there is no evidenced or apparent prejudice. I therefore have no hesitation in concluding that dispensation should be granted.
17. Nevertheless, 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. I make no findings in that regard.

Signed: L Bennett  
Judge of the First-tier Tribunal  
Date: 25 October 2022

### **ANNEX- List of Respondents**

1. Mr S Teale & Ms K Palmer-Rippin
2. Mrs E McGonigal
3. Mr A & Miss L Kouyoumdjian
4. Mr & Mrs S Dyson
5. Mr Armstrong
6. Mr J Souttar
7. Mr P Ball