



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

Case Reference : **MAN/00BR/LDC/2021/0034**

Property : **Old Church Court, 40 Weaste Road, Salford M5
5FW**

Applicant : **Old Church Court Management Services**

Representative : **N/A**

Respondents : **Long Residential Leaseholders at the Property
(see Annex)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Member : **Judge L Bennett**

Date of determination : **20 February 2023**

Date of Decision : **20 February 2023**

DECISION

Application

1. Old Church Court Management Services applies to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of fires safety works (the Works) carried out at Old Church Court (the Property).
2. The Respondents are the Long Residential Leaseholders at the Property and listed at the Annex to this decision.

Grounds and Submissions

3. The application was received by the Tribunal on 16 July 2021.
4. The Applicant is the management company with responsibility for the building.
5. The Tribunal did not carry out an inspection but understands that the Property is a 4 story block of 19 self-contained flats. It appears to be of brick construction with a flat roof part of which is terraced for the residents to use. All floors from ground upwards are accessed through an external stairway and an external lift. It has a basement that is accessed by the external stairway. There is a carpark to the rear, part of which is under the first floor apartments.
6. On 9 February 2022, a Tribunal Judge made directions requiring the service of documents by the Applicant upon each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions. Despite regular enquiries to the Tribunal's administration there was no progress or update on the application until September 2022. Several leaseholders forwarded the Applicant letters from the Tribunal stating that the application had been struck out on 13 September 2022, because the Applicant had failed to provide documents pursuant to the Tribunal's directions. On 16 September 2022 the Applicant wrote to the Tribunal stating that it had not received any correspondence from the Tribunal. Unfortunately, the Tribunal administration had sent correspondence for the Applicant to an incorrect address. On 3 October 2022 a Procedural Judge set aside the strike out decision and a Tribunal Legal Officer issued fresh directions which were then complied with.
7. The Applicant has provided a statement of case explaining why the application was made to the Tribunal together with supporting documents.
8. A fire risk assessment of the building was carried out by NW Fire Solutions in May 2021 (see Appendix 1 of Applicant's Bundle). It highlighted a number of issues that required urgent attention. Subsequently, an audit was carried out on all fire doors at the Property. All doors failed the audit which meant they needed to be replaced (see Appendix 2 of Applicant's Bundle). Shortly afterwards, a meeting took place with Greater Manchester Fire & Rescue Service (GMFRS). The Applicant was then advised that if the works were not carried out quickly then GMFRS may take enforcement action which could result in occupiers being asked to leave the Property at short notice. On 15 July 2021, a letter was sent out to all leaseholders advising them of the necessary works and that an application was being made to the Tribunal for dispensation from the consultation requirements of Section 20 due to

the ongoing fire issues at the building and the need to rectify them as soon as possible.

9. The cost of the works dispensation is sought for is £24,253.89 (£1,276.52 per leaseholder) as set out below:

MCR Property Services - £7,333 – repairs to emergency lighting, smoke alarms and roof repairs (Appendix 4, Applicant’s Bundle).

MCR Property Services - £14,500 – repairs to doors as identified in the fire door audit (Appendix 5, Applicant’s Bundle).

MCR Property Services - £1,325 – repairs to risers and reinstatement of fireproofing (Appendix 6, Applicant’s Bundle).

MCR Property Services - £1,250 – repairs to broken floor tiles (Appendix 7, Applicant’s Bundle).

Additional works were carried out, but these have been covered by the repairs and maintenance budget in the service charge, so no further dispensation application was required.

10. The Tribunal did not receive any submissions from a Respondent Leaseholder. Neither the Applicant nor a Respondent requested a hearing.

11. The Tribunal therefore convened without the parties to make its determination on 20 February 2023.

Law

12. Section 18 of the Act defines “service charge” and “relevant costs”.

13. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.

14. Section 20 of the Act states:-

“Limitation of service charges: consultation requirements

Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-

- a. complied with in relation to the works or
- b. dispensed with in relation to the works by a tribunal.

This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.

15. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”

16. Section 20ZA(1) of the Act states:-
"Where an application is made to a 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."

Tribunal's Conclusions with Reasons

17. 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 Tribunal has not heard from a Respondent in response to the application. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.
18. It is not necessary to consider at this stage the extent of any service charges that may result from the works payable under the terms of the Respondents' leases. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.
19. Having considered the submission made by the Applicant I accept the urgent nature of the works. A consultation exercise would have added considerable delay. For the safety of all residents, a decision was taken to act swiftly and carry out the works. The Applicant did notify Leaseholders about the works and of the application to the Tribunal. I regret that the Tribunal administration did not process the application correctly, or expeditiously, which has led to a significant delay in the making of this retrospective dispensation decision.
20. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying Leaseholders, I conclude that the urgency outweighs any identified prejudice. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.

Order

21. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.

Laurence J Bennett
Tribunal Judge
20 February 2023

Annex - List of Respondent Leaseholders

Leaseholder
Anne Jennifer Abbott
Attila Csarji
Damion Queva
Dante Tanikie-Montagnani
Dandan Liu
Matthew Davies
N & C Estates Limited
Nicola Jane Maynard
Noel Joseph Newman
Paul Anthony Hopwood
Paul Rennison
Peter Laurie Robertson
Pierre Lemesre
Richard Lawrence Garvey
Stuart John Fumiss
Sylwia Anna Kedzior
Tenagne Work Geressu
Wai-Kei Wan