



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

Case Reference : **MAN/30UP/LDC/2022/0060**

Property : **14-18 (evens) & 29-45 (odds) Guinea Hall
Close and 18-28 Guinea Hall Mews,
Southport PR9 8RG**

Applicant : **Guinea Hall Farm Management
Company Ltd**

Representative : **Residential Management Group Ltd**

Respondents : **The Residential Leaseholders of the
Properties (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 : **10 May 2023**

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 the complete re-roofing to the back elevation to block 18-28 Guinea Hall Mews. This includes the replacement of all felt, battens and roof tiles, repairs to skylight flashing kits and cowls, and the bedding in of ridge tiles.

REASONS

Background

1. On 25 November 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 Residential Management Group Ltd on behalf of the Applicant Guinea Hall Farm Management Company Ltd and relates to premises known as 14-18 (evens), 29-45 (odds) Guinea Hall Close and 18-28 Guinea Hall Mews, Southport PR9 8RG (“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 retrospective dispensation is sought comprises the complete re-roofing to the back elevation to block 18-28 Guinea Hall Mews. This includes the replacement of all felt, battens and roof tiles, repairs to skylight flashing kits and cowls, and the bedding in of ridge tiles.
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 17 January 2023. The Tribunal accepts that the Applicant complied with paragraph 4 of the directions and sent a copy of their bundle of documents to each Respondent on 2 February 2023. The directions subsequently required any Respondent who opposed the application to notify the Tribunal of their objection within 21 days of receipt of the Applicant’s bundle. 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 the development to be wholly residential with a mix of flats and housing and built by Redrow Homes in the late 1990s to early 2000s. The development has three separate blocks of flats managed by Guinea Hall Farm Management Company Limited. These are 14-18 & 41-45 Guinea Hall Close, 29-39 Guinea Hall Close and the subject of this application 18-28 Guinea Hall Mews. Each block is comprised of six flats, two flats per floor with the stories being ground, first, and second floors. The construction is traditional, with the main walls being of cavity brick work and pitched and tiled roofs and lead flashing to parapet wall abutments. The top floor flats also have Velux Windows.

Grounds for the application

8. In respect of the works for which retrospective dispensation is sought, the Applicant's case is that they had to proceed due to the severity of the damages on the roof causing leaks in Flats 22 and 28 Guinea Hall Mews and due to the condition of the weather during the winter period. The Applicant advises that the roofing elements were deteriorating, therefore part of the roofing materials were ineffective. According to the Applicant, a form of consultation was undertaken ahead of commencing the works. The consultation consisted of a notice of intent to carry out qualifying works and a letter to the leaseholders noting the two estimate quotes. The letter explained the statutory process but highlighted that this would not be completed, therefore an application to the Tribunal for dispensation would be required. The Applicant submits that no observations were received from Respondent leaseholders in response.
9. Additionally, the Applicant submits that their aim was to provide a more comprehensive solution to the roof leaks and thus avoid future leaks and subsequent repairs. The Applicant advised that they proceeded with the lowest quote to ensure the cost of the works were reasonable and value for money was obtained for the leaseholders. It is argued that the Applicant has tested the market and considers the approach taken to be fair and reasonable for the avoidance of financial prejudice to the leaseholders. For these reasons, it is averred that the leaseholders have not been prejudiced by the lack of consultation process and therefore it is reasonable to dispense with the remaining consultation requirements.

Law

10. 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.

11. 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.*

12. “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).

13. 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.

14. 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

15. 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.
16. 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.
17. I accept from the details provided that in the present case there was an urgent need for swift remedial action to ensure that the deteriorating roof elements at the Property were remedied. 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 the Applicant attempted to seek the most competitive valuation for the works and that both estimate costs for the works were circulated to the Respondent leaseholders. A form of consultation has been undertaken, and there is no evidenced or apparent prejudice. I therefore have no hesitation in concluding that retrospective dispensation should be granted.

18. Nevertheless, the fact that the Tribunal has granted retrospective 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: 10 May 2023

ANNEX- List of Respondents

1. Mr & Mrs Andrews
2. Miss K Halsall
3. Mr M Croft
4. Mr & Mrs Kay
5. Mr T Holmes
6. Mr A Sumner
7. Mr J Forshaw
8. Ms J Murphy
9. Mr & Mrs Gibbons
10. Mrs E Rimmer
11. Mr C Trim
12. Mr D Mayor & Ms S Caunce
13. Mr P Quinlan
14. Mr R Pattison
15. Ms L Marshall
16. Mr & Mrs Nelson
17. Mr K Partington
18. Miss L Woodcock