



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

Case Reference : **MAN/30UK/LDC/2022/0038**

Property : **Centenary Mill, New Hall Lane, Preston
PR1 5JQ**

Appellant : **Centenary Mill Court (Preston) RTM
Company Limited**

Respondents : **The long leaseholders of the individual flats**

**Type of
Application** : **Application under Section 20ZA Landlord
and Tenant Act 1985 (to dispense with
Section 20 consultation)**

**Tribunal
Members** : **Mr J R Rimmer (Tribunal Judge)
Mr J Faulkner**

Date of Decision : **16th August 2023**

**Date of
Determination** : **5th September 2023**

Order : **The dispensation sought by the Applicant
from compliance with section 20 Landlord
and Tenant Act 1985 is granted for the
reasons set out herein.**

Application and background

- 1 This is an application under Section 20ZA Landlord and Tenant Act 1985 (“the Act”) seeking a dispensation from the requirement to fulfil the consultation requirements of Section 20 Landlord and Tenant Act 1985 (further clarified by the Service Charges (Consultation Requirements) (England) Regulations 2003) in relation to what are termed “qualifying works” within that section.
- 2 The works in question are repairs to the roof of the entrance hall to the building to prevent water ingress to the building.
- 3 The Applicant indicates that these repairs became evident during other works being carried out to the roof of the hall. Those works were the subject of a full, separate consultation process.
- 4 The Applicant, through its agents, has taken the view that seriousness of the situation was such as to justify immediate work being carried out by the contractors on site whilst scaffolding was in place for the initial works. The applicant suggests that the inevitable consequence of that decision was that immediate repairs were facilitated but the leaseholders denied an opportunity for consultation that would have caused delay and additional cost in losing the scaffolding in place, together with the convenience of workers already on site. In relation to management and upkeep of the building.
- 5 Directions were given by a legal officer of the Tribunal on 12th February 2023 and following service of the application upon the leaseholders a considerable number of queries and objections were made in respect of the application, to the extent that the Applicant’s agent, Homestead Consultancy Services Limited, had to seek an extension of time within which to comply with directions in order to seek to answer those matters raised.
- 6 The Tribunal is aware generally of the difficulties that have faced this particular building and the many issues that have troubled leaseholders for many years. This has engendered an atmosphere of healthy enquiry and it is clear that a frictional interface exists between the parties in relation to management and upkeep of the development. It would appear difficulties experienced by the managing agents in ensuring correct service of the application upon the leaseholders may not have assisted that state of affairs. In due course service of the application was properly effected.

- 7 The Applicant's submissions (via their managing agents) were made to the Tribunal in the course of the Application and supported this with report from consulting surveyors.
- 8 Leaseholders provided a number of responses and it is clear that they place the blame upon the original converter of the building for poor workmanship and "corner cutting" that has resulted in constant billing for remedial work. It appears to be a repeated theme that whilst others are regarded as being responsible for defects the cost of remedying them fall upon the leaseholders.

The Law

- 9 Section 18 Landlord and Tenant Act 1985 defines both a "service charge" and also "relevant costs" in relation to such charges whilst Section 19 of the Act limits the amount of those costs that are included in such charges to those which are reasonably incurred in respect of work which is of a reasonable standard.
- 10 Section 20 of the Act then proceeds to limit the amount of such charges that may be recoverable for what are known as "qualifying works" unless a consultation process has been complied with. By Section 20ZA of the Act qualifying works are any works to the building or other premises to which the service charge applies and the relevant costs would require a contribution from each tenant of more than £250.00.
- 11 Section 20ZA(1) particularly provides that:
"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."
- 12 The consultation process envisages a multi-stage approach by requiring:
 - (1) A notice of intention to carry out qualifying works
 - (2) The right of the leaseholders to nominate a contractor
 - (3) The need for two, or more, estimates
 - (4) The need to give reasons for the eventual choice of contractor.It is in respect only of the last of these that the Applicant seeks its exemption.

Inspection

- 13 On the morning of Monday 3rd July the Tribunal inspected Centenary Mill and found that it was initially a large structure originally constructed as a cotton mill in 1898 and converted into apartments in 2006. The conversion

works produced 182 apartments on 7 floors plus a commercial unit at basement level. The former pump house to the rear (the opposite side from New Hall Lane) became the new entrance hall, having a height of some 9 metres. In addition to the conversion three new build blocks, each 3 storeys high and comprising a total of 24 apartments, were also constructed.

Hearing and evidence

- 14 Later the same day the Tribunal reconvened for a hearing via videolink attended by the managing agent and their representatives and a number of interested leaseholders.
- 15 The Application was presented on the basis that the difficulty the managing agents faced related to the timeline that arose when the water ingress was investigated. Contractors were already engaged on works relating to the roof and scaffolding for that was in place. It was felt that an immediate decision was required, either to instruct the contractors immediately to proceed with remedial works, or to have them end their current contract and have scaffolding removed whilst a full consultation process was adhered to. Thereafter scaffolding would need to be re-erected and contractors re-engaged. A delay of up to three months was considered the likely outcome of full consultation process.
- 16 The Applicant felt it was justified in making the decision it did and to instruct the contractors on site. The contractors had discovered plywood gutters were rotting and water was pooling in significant amounts on the floor of the former boiler room. Such was the situation that there was concern that there might be a partial collapse to the ceiling and serious health and safety issues arising from the pooling water and possible falling materials.
- 17 The managing agents had only become involved in the management of the site in 2019 and had inherited a backlog of works that needed to be carried out and a plan put in place in 2016 for roof works and not yet completed. . Realistically, they were unable to anticipate all the issues that might require attention and this was one of them. It was not until scaffolding was erected and the roof accessed that the current problem became apparent. If there was a suggestion that the first works to the roof parapet precipitated the further issue of water ingress, that was not discoverable until activity on the roof began.
- 18 The contractors on site, Stone Technical Services Group, had been the recipients themselves of work instructions following a full consultation process and were already working closely with MJC Consulting who were familiar with the building. There were therefore minimal concerns as to the quality of the work which would be carried out and the likelihood of unreasonable costs being incurred.

- 19 Two leaseholders present at the hearing, Mr Pampel and Ms Hubert, raised their concerns firstly, about the lack of any necessity to avoid the consultation process and secondly, the standard of work that could be expected from the contractors.
- 20 Mr Pampel highlighted the continuing issues arising in respect of the roof and an application for planning permission in 2016 which would involve carrying out works that ought to have taken account of what was now found.
- 21 Ms Hubert was of the view that the leaseholders were prejudiced by the use of the current contractors, having been given no opportunity to consider alternatives in the light of earlier perceived failings. The roof Whist awaiting progress of the application to the Tribunal and parallel consultation process that had been put in place an enhanced fire alarm system was installed. As soon as two quotations for the required work were received the Applicant set about the process of instructing the provider of the less expensive quotation to start work.
- 22 A number of other written representations were received in the course of the proceedings from other leaseholders that suggested that the timescale between the discovery of the problem and the commencement of work would have enabled a consultation process to have taken place. They also express more general concerns as to the cost of the works, including the consultants' fees and the standard achieved.

Determination

- 23 The Tribunal has power under Section 20ZA Landlord and Tenant Act 1985 to determine that on an application to dispense with some or all of the consultation requirements under Section 20 it is satisfied that it is reasonable to dispense with those requirements.
- 24 On the evidence available to it the Tribunal is able to make the following determinations:
 - (1) There was a serious risk of injury posed the water ingress to the former boiler room from the defects discovered on commencement of the earlier works.
 - (2) It was a legitimate concern that work should be commenced at an early opportunity in order to minimise damage and risk.
 - (3) It was appropriate in the circumstances to use the scaffolding currently in place and the contractors currently on site to commence the work as speedily as possible.
 - (4) The managing agents made a reasonable assessment of the suitability of the contractor to carry out the work.

- (5) There is nothing to suggest that, on evidence currently available, there is a significant risk of any financial prejudice to the leaseholders over and above the inevitable costs of remedial works. Those costs may have been higher if delay had occurred.
 - (6) It is conceivable that the Applicant and the managing agents may have been able to deal with the matter in a different way if steps had been taken earlier in relation to the proposals within the 2016 planning permission, but this is in no way clear on the evidence available to the Tribunal.
 - (7) The Tribunal must consider the situation as it was known to the Applicant at the time the decision was made to dispense with the Section 20 consultation process. Respondents may be correct in asserting that they were deprived of an opportunity to provide input specifically provided to them by statute, but the decision, at the time it was made, was a reasonable one.
- 25 Even though the Tribunal has determined that it is appropriate to dispense with compliance with the consultation requirements this does not prejudice the future rights of any leaseholder to challenge the reasonableness of any costs incurred in respect of the relevant works under Section 27A Landlord and Tenant Act 1985 relating to the service charges for the year(s) in question.
- 26 In the circumstances the Tribunal is satisfied that it is reasonable to dispense with the requirements to comply with Section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements)(England) Regulations 2003.

J R RIMMER (Tribunal Judge)