



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

Case Reference : **MAN/00CA/LDC/2022/0058**

Property : **12 Park Avenue, Southport, PR9 9LS**

Applicant : **Park Avenue (Southport) Management
Company Limited**

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 : **1 June 2023**

Date of Decision : **1 June 2023**

DECISION

Application

1. Park Avenue (Southport) Management Company Limited 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 external maintenance works requiring scaffolding (the Works) at 12 Park Avenue, Southport PR9 9LS (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 7 November 2022.
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 brick built detached house originating from the Victorian era with a slate roof. It was converted in to flats in two stages. The 3 flats (B, C & D) on the first and second floors were converted c1976, and the large ground floor flat was converted in to Flats A1 and A2 c1982. There is a basement area which is split between Flat A1 and a communal usage area and a large garden area to the rear with a parking area in front.
6. On 16 February 2023, a Tribunal Legal Officer 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.
7. The Applicant has provided a statement of case explaining why the application was made to the Tribunal together with supporting documents.
8. On 16 October 2018 a Notice of Intention to Carry Out Works was sent to each leaseholder. It was planned that the maintenance works be carried out in 2 phases. No responses were received from any of the leaseholders. The only quote received was for £22,000 which was for brickwork tasks only. This was considered to be expensive. The Management Company is run by its directors. There is no managing agent and so the process lost momentum. The covid pandemic exacerbated the situation. During Summer 2022 a scaffolding contractor was found as well as separate tradesmen to undertake several of the maintenance tasks that were identified in 2018 (Section 20 & Non-Section 20 works). It was considered that recommencing the S20 consultation process would lead to yet more delay.
9. SECTION 20 WORKS & COSTS

Works	Costs
Scaffolding	£3,840
Brickwork	£3,840
Facia top of Flat D	£1,500
Paintwork	£2,500
Roofing	£1,700

Full estimates/quotes can be found on pages 19-23 of the Applicant's bundle.

10. On 13 October 2022, leaseholders were issued with service charge demands for 2022/2023. The Section 20 works were explained as to their necessity as well as costs. The directors of the management company asked leaseholders if they would waive the Section 20 process for those works. It was further explained that if 2 leaseholders objected, the works would have to be put on hold. If 1 leaseholder objected, the works would proceed but a formal dispensation from Section 20 would be sought from the Tribunal. 4 out of the 5 leaseholders were happy to waive the Section 20 consultation process. 1 leaseholder did not agree, thus an application had to be made to the Tribunal.
11. The Tribunal received a submission from 1 Respondent leaseholder. However, the submission relates solely to the procedure of receipt of the Applicant's bundle and the fact that a replacement had to be provided due to printing issues. It did not address the works at the Property or the application for dispensation from the Section 20 consultation requirements.
12. Neither the Applicant nor a Respondent requested a hearing. The Tribunal therefore convened without the parties to make its determination on 1 June 2023.

Law

13. Section 18 of the Act defines "service charge" and "relevant costs".
14. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
15. 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".
16. "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."
17. 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

18. 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.

19. It is not necessary to consider at this stage the extent of any service charges that have resulted from the works payable under the terms of the Respondents' leases. Such charges, if disputed, may properly be the subject of a future application to the Tribunal.
20. Having considered the submission made by the Applicant, I accept the reasons for making the application and the urgent nature of the works. A full consultation exercise would have added considerable delay. For health and safety reasons, the need to protect the fabric of the building and to keep costs to a minimum, a decision was taken to act swiftly and carry out the works before the autumn and winter months set in, bringing potential bad weather causing further rain penetration and damage. The Applicant did notify leaseholders about the works and of the application to the Tribunal.
21. 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 potential prejudice. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.

Order

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

Judge L Bennett
1 June 2023

Annex - List of Respondent Leaseholders

Leaseholders
Graham Wood
Elizabeth Matthews
Zoe Grant
Diane Swift
Heather Salt