



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

Case Reference

MAN/00DB/LDC/2023/0023

Property

**: Micklegate House, Horsefair, Pontefract and
Unit 3 The Walkway, Shop Kiosk Unit 6 The
Walkway, 4, 6, 6B and 10A Horsefair WF8
1PD**

Applicant

: Brigante Properties Ltd.

Representative

: J B Leitch Ltd.

Respondents

: various leaseholders

Type of application

: s.20ZA of the Landlord and Tenant Act 1985

Tribunal members

**: Judge P Forster
Mr I D Jefferson FRICS**

DECISION

© CROWN COPYRIGHT 2023

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the replacement of the water pump which serves the premises known as Micklegate House, Horsefair, Pontefract and Unit 3 The Walkway, Shop Kiosk Unit 6, The Walkway, 4, 6, 6B and 10A Horsefair.

Background

1. This is a retrospective application under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) to dispense with the consultation requirements of s.20 of the Act. These requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application is made in respect of Micklegate House, Horsefair, Pontefract and Unit 3 The Walkway, Shop Kiosk Unit 6, The Walkway, 4, 6, 6B and 10A Horsefair (“the Premises”) held under title number WYK582950 at HM Land Registry. The Premises is three stories in height and comprises 28 residential flats and ground floor commercial units.
3. The Applicant, Brigante Properties Ltd., is the freehold owner and landlord of the Premises.
4. The Respondents are the residential leaseholders of the flats within the Premises. A list of the Respondents is annexed to this decision.
5. The flats located within the Premises are subject to long residential leases. All the leases were granted on similar terms.
6. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
7. The proposed works are “qualifying works” within the meaning of section 20ZA(2) of the Act.
8. The Tribunal issued directions on 24 May 2023. It considered that the application could be resolved by way of submission of written evidence but invited any of the parties to apply for hearing if so desired. No such application has been made and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. The directions included at paragraph 5 a provision that required the Applicant to write to each of the Respondents informing them of the application and providing them with information about the application process. Paragraph 6 provided that any respondents who oppose the application were to submit written representations to the Tribunal. Paragraph 7 allowed the Applicant to submit a final written statement in reply before the Tribunal makes its determination.

Grounds for the application

9. The Applicant's case is that the works were urgently required to replace the water pump which serves the Premises in order to ensure that the water supply to the Premises was not cut off. Given the urgency of the works the Applicant states that it did not have sufficient time to comply with the consultation process set out in s.20 of the Landlord and Tenant Act 1985 which would have taken several months. Further, the Applicant only obtained one quotation for the works and therefore would not have been able to comply with the second stage of the consultation process which requires the landlord to obtain at least two estimates. It is submitted that there is no prejudice to the Respondents by granting dispensation. The works were carried out on an urgent basis and were in the best interest of the Respondents.
10. The Applicant asks the Tribunal to grant dispensation in respect of the works, which it considers to have been so urgent as to warrant avoiding the delay that compliance with the consultation requirements would have entailed.

The Law

11. 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.

12. 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.*

13. "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 in 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).

14. 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.

15. 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.

Reasons for the decision

16. The Tribunal must decide whether it is reasonable for the works to proceed without the Applicant first complying in full with the s.20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
17. The Tribunal had regard to the principles laid down in Daejan Investments Ltd. v Benson [2013] 1 WLR 854 upon which its jurisdiction is to be exercised.
18. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord decides to undertake qualifying works. 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.
19. It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should and could not be delayed. In considering this, the Tribunal must consider the prejudice that is caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

20. In the present case there is no doubt that the works were necessary and pressing for the occupiers of the flats. The Tribunal finds that it was reasonable for the works to proceed without the Applicant first complying in full with the s.20 consultation requirements. The balance of prejudice favoured permitting such works to proceed without further delay.
21. The Applicant served the Respondents with the application on 24 May 2023 and none of the Respondents have responded to it.
22. The Tribunal would emphasise the fact that it has solely determined the question of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision should not be taken as an indication that the Tribunal considers that the amount of the anticipated service charges resulting from the works is likely to be recoverable or reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard and, should they desire to do so, the parties retain the right to make an application to the Tribunal under s.27A of the Landlord & Tenant Act 1985 as to the recoverability of the costs incurred, as service charges.

Dispensation order

23. The Tribunal determines that compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the replacement of the water pump which serves the Premises.

4 August 2023

Judge P Forster

Annex - List of Respondents

1. Steven Fox Limited
2. Christine Pickles
3. John Ronald Harrison
4. Sally Ann Martin
5. Tracey Anne Townsend
6. Zipolite Limited
7. Cloverton Properties Ltd
8. Nghia Van Nguyen

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.