



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

Case Reference : **MAN/00BU/LDC/2023/0035**

Property : **Marloes, Park Road, Altrincham
WA14 3JF**

Applicant : **Marloes Management Company Limited**

Representative : **James Stevenson, Stevenson Whyte**

Respondents : **Various Residential Long Leaseholders-
See Annex**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – Section 20ZA**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S. A. Kendall**

**Date of
Determination** : **31st October 2023**

Date of Decision : **2nd November 2023**

DECISION

Decision

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of works carried out at the Property in the sum of £14520 is granted.

Background

2. This is an application made by Marloes Management Company Limited (“the Applicant”) for the dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) for remedial works undertaken at the development known as Marloes, Park Road, Altrincham (“the Property”) in March/April 2023.
3. There are eight leaseholders of the Property and the Tribunal has seen copies of correspondence from the Applicant advising them of the necessary works. The Property suffered from persistent water ingress in wet weather and urgent work to the roof was required to minimise further damage. It is said the process required by section 20ZA of the Act could not be followed due to the urgent nature of the works. Further, other contractors hired to deal with the issue failed to correctly identify the cause of the leaks and had not been able to resolve the matter. It was therefore said that a consultation process would have been ineffective. The Tribunal was advised that none of the leaseholders objected to the remedial work.
4. The Applicant filed a copy of the quotation for the necessary work, dated 2nd March 2023 in the sum of £18,120 and the subsequent invoice for the work done, in March/April 2023, at a lower cost of £14520. It is this invoice for which dispensation is sought.
5. The Respondents to the application are the various long leaseholders of the Property (“the Respondents”).
6. The application is dated 11th May 2023 and in respect of which directions were issued on 17th August 2023 providing for the filing of any objections by the Respondents and for the application to be determined without a hearing.
7. The Applicant confirmed no objections had been received to the application, nor were any representations received by the Tribunal.
8. The Tribunal considered the application on the Applicant’s written submissions on 31st October 2023.

The Law

9. Section 20 of the Act provides:

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement-

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount-

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined”

10. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

11. Section 20ZA of the Act provides:

(1) Where an application is made to a tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works, or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements

(2) *In section 20 and this section-*

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to section (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

12. 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.

Submissions

13. The Applicant is the Residents Management Company of the Property, a purpose built development comprising eight flats.
14. The Applicant advised of continuing issues with water ingress at the Property affecting Flats 4 and 5. The issues began in November 2021 and contractors were employed to find the source and carry out such repairs as were necessary. Investigations continued until February 2023 when another contractor was asked to carry out further investigations. Their investigations revealed urgent necessary works were required to the roof to prevent further water ingress and internal damage. A quote was provided and due to the urgency of the work, the contractors were instructed to proceed. Their final invoice was in the sum of £14520.
15. The Applicant seeks dispensation from the Consultation Requirements due to the urgent nature of the work required. If the Consultation Requirements had been carried out this would have caused a significant delay and incurred further damage to the Property
16. The Applicant has confirmed all the work has been carried out with the agreement of the leaseholders, none of whom have lodged an objection to the application.

Determination

17. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where *“if satisfied that it is reasonable to dispense with the requirements”*.
18. The Tribunal, having considered the submissions made by the Applicant, is satisfied there is good reason to dispense with the Consultation Requirements. The Applicant carried out the necessary works at the Property to mitigate the cost to the Respondents of further damage occurring at the Property.
19. The Tribunal has taken into account that the Applicant has engaged with the Respondents, explained what steps it proposed to take and no objections have been received.
20. The Tribunal does not find there has been any prejudice to the Respondents.
21. The granting of dispensation does not affect the Respondents’ rights to the challenge the reasonableness or the payability of the service charges under a separate application pursuant to section 27A of the Act.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Tribunal Judge J Oliver
2nd November 2023

Annex A

MAN/ooBU/LDC/2023/0035

Mr & Mrs E & F Beale
Sir H Roche
Ms S J Luby
Mr G Phillips
Mrs L Frost
Mr & Mrs JM & SR Lucas
Ms R Nicholls
Mr & Mrs R & S Khemlani