



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

Case Reference(s) : **MAN/00CA/LDC/2023/0072**

Property : **51, Talbot Road, Southport, Merseyside PR8 1HS**

Applicant : **Mr Ibrahim Nur/Al Ahdal & Co. Limited**

Represented by : **Ms Catherine Kersey, 2 Rivers Property Management Limited**

Respondents : **Mr Edward Tinsley/Move with Us – Flat 1
Mr Ibrahim Nur – Flat 2
Mr Will Brum – Flat 3
Mr Larry Su – Flat 4
Mr Thomas Langlois – Flat 5**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member N Swain**

Date of Decision : **28 February 2024**

Date of Determination : **6 March 2024**

DECISION

Order

1. The Tribunal determines that it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to the works to be carried out to the fire alarm system and the electrical installation at the Property.

Background

2. By an application dated 15 November 2023, (“the Application”), the Applicant applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985, (“the 1985 Act”), for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (together “the Consultation Requirements”), in respect of qualifying works proposed to be undertaken at the Property.
3. The Respondents are the individual residential leaseholders of the flats at the Property.
4. Directions dated 14 December 2023, (“the Directions”), were issued to the parties, in response to which the Applicant submitted written representations.
5. No submissions were received from any of the Respondents.
6. The Directions stated that the Application would be determined by the Tribunal “on the papers” in the absence of a request for a hearing from any of the parties. No request was received.
7. The determination of the Application was scheduled to take place on Tuesday 27 February 2024.
8. No inspection of the Property was undertaken by the Tribunal.

Evidence

9. The Applicant, as the Lessor under the leases of the flats at the Property, has responsibility for the management of the Property in accordance with the leases.
10. The Applicant has appointed Ms Catherine Kersey of 2 Rivers Property Management Limited as managing agent of the Property, (“the Agent”).

Applicant’s Submissions

11. The Applicant’s submissions, as set out in the Statement of Case dated 5 January 2024 submitted by the Agent on the Applicant’s behalf, are summarised as follows:
 - 11.1 there are urgent works required both to the fire alarm system and electrical installation at the Property, (together “the Works”);

- 11.2 reference is made to an Electrical Installation Condition Report dated 13 November 2023, (“the EIC Report”), and Fire Risk Assessment dated 8 November 2022, (“FRA”);
- 11.3 reference is also made to the Improvement Notice dated 14 November 2023, (“the Improvement Notice”), and to the supporting report itemising deficiencies giving rise to the identified hazards;
- 11.4 both the fire alarm system and electrical installation at the Property have been adjudged “unsafe”;
- 11.5 a s20 consultation process has been started by the Agent and, as part of that process, the Agent has obtained 2 quotes for each set of works;
- 11.6 correspondence with the Respondents relating to the s20 procedure and enclosing the quotes received from the two contractors, Photondale Electrical Services, (“Photondale”), and Residential Contractors and Constructors Limited, (“RCC”), are attached to the Statement of Case;
- 11.7 three of the five leaseholders have now paid their percentage share of the costs of the Works and “...the freeholder considers this a majority vote for the court to grant his request”;
- 11.8 the Applicant seeks orders from the Tribunal as follows:
- (1) to “excuse” the Agent from completing the final stage of the s20 procedure in order that they can proceed to appoint a contractor to undertake the Works as soon as possible; and,
 - (2) to permit the Applicant to immediately appoint Photondale to do the Works “as the most economic estimate and in accordance with the works his estimate laid out”.

Respondents’ Submissions

12. Although none of the Respondents has made written submissions to the Tribunal in response to the Application, the Applicant has copies of email exchanges with two of the leaseholders, Mr Larry Su (Flat 4), and Mr Thomas Langlois, (Flat 5), in which they raise the following points:

12.1 Mr Su:

- (1) he considers that the Works are only required to be done by reason of the renting out of Flats 1-3 which has resulted in the need for the Applicant to obtain an HMO licence for the Property;
- (2) as such, he claims that the two resident leaseholders, Mr Langlois and himself, should not bear any share of the cost of the Works;
- (3) he further claims that some of the works to be undertaken are the result of damage caused by the squatters who had been in occupation of Flat 2 until relatively recently;

12.2 Mr Langlois:

- (1) Mr Langlois objects to the quoted costs of the Works and claims that he could arrange for the Works to be completed at significantly lower cost.

Applicant's Response

13. In response to these points, in the correspondence, the Agent states as follows:

13.1 the Works would have been required to be done whether or not there was an HMO licence in respect of the Property;

13.2 in view of the issue of the Improvement Notice, there is a need to ensure that the Works are undertaken by suitably qualified contractors carrying, inter alia, appropriate insurance.

Law

14. Section 20ZA(2) of the 1985 Act defines qualifying works as "works on a building or any other premises".

15. Section 20 of the 1985 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 been either:-

- a. complied with in relation to the works, or
- b. dispensed with in relation to the works by the First Tier Tribunal

16. Regulation 6 of the Regulations provides that for the purpose of s20(3) of the 1985 Act "the appropriate amount" is an amount which results in the relevant contribution of any tenant being more than £250.

17. Section 20ZA(1) of the 1985 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."

Reasons

18. The Tribunal notes as follows:

18.1 having regard to the costs as quoted in the Photondale quote, the Tribunal is satisfied that a s20 consultation is required in the absence of a grant of dispensation under s20ZA;

- 18.2 there is no “clash”, as suggested by the Agent, between the issue of the Improvement Notice and the consultation provisions under the 1985 Act. The former relates to proceedings between the relevant local authority and, in this case, the freeholder, whilst the latter relates to a statutory scheme regulating consultation between a landlord and their tenants;
 - 18.3 it accepts the Applicant’s evidence that the Works are required and that there is an element of urgency in getting them done at the earliest possible time because of the safety issues raised, in particular, in the EIC Report;
 - 18.4 for the purpose of this Decision, the Qualifying Works are to be regarded as together the Works as set out in the two quotes from Photondale;
 - 18.5 the extent of the consultation which has been undertaken by the Agent on the Applicant’s behalf. The Tribunal makes no determination as to the compliance, or otherwise, by the Agent with the Regulations; and,
 - 18.6 the agreement of a majority of leaseholders to make payment of their share of the costs of the Qualifying Works does not exclude the possibility that other leaseholders may establish relevant prejudice to be taken into account by the Tribunal in its determination whether or not to grant dispensation.
19. In determining whether it is reasonable to grant an application under s20ZA of the 1985 Act, the Tribunal should consider the following:
 - 19.1 the rationale for the undertaking of a consultation exercise, namely, to ensure that leaseholders are protected from paying more than would be appropriate; and,
 - 19.2 whether there is evidence of prejudice to any of the leaseholders as a result of a lack of consultation.

Prejudice

Mr Su’s Objections

20. In determining whether there is evidence of any prejudice to the Respondents by reason of Mr Su’s objections, the Tribunal considers that it is relevant to note as follows:
 - 20.1 the obligation on the Applicant as landlord to effect maintenance and repairs to the Property, and the obligation on the Respondents, as leaseholders, to contribute to the cost of such maintenance and repairs are contractual obligations under the terms of their leases and distinct from any obligations on the Applicant with regard to the Property as set out in the HMO licence; and,

20.2 there is no evidence before the Tribunal that the Qualifying Works are required as a result of any acts of vandalism or wilful damage caused by 3rd parties living in or visiting flats in the Property.

Mr Langlois' Objections

21. In determining whether there is evidence of any prejudice to the Respondents by reason of Mr Langlois' objections, the Tribunal considers that it is relevant to note as follows:

21.1 the extent of the consultation which has been undertaken by the Agent on the Applicant's behalf and, in particular but without limitation:

- (1) that the Agent has obtained quotes for the Works from two different contractors which have been circulated to the Respondents; and,
- (2) that the Agent has indicated that it is the intention to appoint Photondale as the contractor to do the Qualifying Works, whose quote is the lower in respect of both sets of Works;

21.2 although Mr Langlois has suggested that the costs for the Qualifying Works are unreasonably high and that he could arrange for them to be done cheaper, he has not provided any evidence to the Tribunal to support this claim.

22. In view of paragraphs 20 and 21, the Tribunal concludes that there is no evidence before it of any prejudice to the Respondents by reason of a lack of consultation.

Determination

23. The Tribunal therefore determines that, in accordance with Section 20ZA(1) of the 1985 Act, it is satisfied that it is reasonable to dispense with the consultation requirements under s20 of the 1985 Act.

24. With regard to the Agent's request for orders from the Tribunal as summarised in paragraph 11.8, the Tribunal's power is limited to making an order dispensing with the consultation requirements if it is satisfied that it is reasonable to do so. In particular, the Tribunal does not have any jurisdiction to direct the Applicant to make appointment of a particular contractor.

25. Nothing in this determination shall preclude consideration of whether the Applicant may recover by way of service charge from any of the Respondents any or all of their relevant contribution towards the costs of the Qualifying Works or the costs of this Application should an application be received under Section 27A of the 1985 Act. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.

Tribunal Judge C Wood

28 February 2024