



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

Case Reference : **MAN/00FF/LDC/2023/0054**

Property : **Kirk House
Mill Mount
York
YO24 1AG**

Applicant : **Kirk House (York)
Management Limited**

Representative : **Watsons**

Respondents : **Long leaseholders of the Property
(see Annex)**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Member : **Judge J Holbrook**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **26 February 2024**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the replacement of a water pump head at the Property.

REASONS

Background

1. In July 2023, an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made by Kirk House (York) Management Limited, the management company in relation to Kirk House, Mill Mount, York YO24 1AG (“the Property”). The Property comprises a residential development of 21 apartments. The Respondents are the respective long-leasehold owners of those apartments, whose details are set out in the Annex to this decision.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern the replacement of one of the two water head pumps serving the Property and which provide heating and hot water to the apartments. It is understood that those works were carried out in 2023.
5. On 18 October 2023, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and I have accordingly decided this matter without a hearing. Written submissions and documentary evidence in support of the application were provided on behalf of the Applicant, but no comments have been received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Law

7. 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.

8. 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.*

9. “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 on 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).

10. 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.

11. 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.

Grounds for the application

12. The Applicant's case is that one of the two electric pumps which operate to supply water and heating to the apartments seized, placing additional strain on the remaining pump. There was a risk that the supply would be interrupted. The defective pump head was therefore replaced urgently by the servicing contractor. Although the leaseholders were informed in March 2023, no formal consultation took place and the Applicant submits that dispensation should be granted retrospectively due to the urgency of the situation. I gather that the total cost of the works was £5,300 plus VAT.

Discussion and conclusions

13. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or a management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted. As there is no indication that the leaseholders in this case have suffered any prejudice as a consequence of the failure to comply with the consultation requirements, the application must succeed and dispensation is therefore granted.
15. Finally, however, I observe that the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. I make no findings in that regard.

Annex
(List of Respondents)

Mr & Mrs Livingston
Mr & Mrs Lilly
Mr & Mrs Kelly
Mr & Mrs Gratton
Mr J Dixon
Mr & Mrs Oliver
Ms Kirton
Mrs Milman
Mr & Ms Oxtoby
Ms Halcrow
Mr & Mrs Naughton
Ms McEvoy & Ms Dunkerley
Mr & Mrs Cullen
Mr & Mrs Pickering
Mr Grainger
Mrs Callin
Mr Brown
Mr Whaley & Ms White
Ms Topham
Mr & Mrs Atkinson
Brick Lane Development