



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

Case Reference

MAN/00DA/LDC/2023/0073

Premises : **St Ann's Hill, St Ann's Lane, Headingley,
Leeds, LS4 2SG**

Applicant : **St Ann's Hill Limited**

Representative : **J H Watson Property Management Limited**

Respondents : **various leaseholders**

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

**Tribunal
members** : **Judge P Forster
Mr J Faulkner FRICS**

**Date of
Determination** : **28 March 2024**

DECISION

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Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the initial clearing of the site and stabilising and making safe of part of the boundary wall at St Ann's Hill, St Ann's Lane, Headingley, Leeds, LS4 2SG as described in the report dated 1 October 2023 prepared by Darren Chapman of Dunster Consulting and included in the quotation dated 18 October 2023 from PBS (Yorkshire) Ltd.

Background

1. This is an 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 dated 17 November 2023 is made in respect of St Ann's Hill, St Ann's Lane, Headingley, Leeds, LS4 2SG ("the Premises"). The Premises is a single converted building consisting of four apartments off one communal area. In addition, there are for externally accessed houses that are part of the same building.
3. The Applicant, St Ann's Hill Limited, is the freehold owner and landlord of the Premises.
4. The Respondents are the residential leaseholders of the apartments and houses within the Premises. A list of the Respondents is annexed to this decision.
5. The apartments and houses within the Premises are subject to long residential leases which 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 16 January 2024. 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.

Grounds for the application

9. The Applicant commissioned a report dated 1 October 2023 from Darren Chapman of Dunster Consulting a firm of civil and structural engineers. Mr Chapman states that the collapsed wall sits on the boundary between nos. 23 and 25 St Ann's Gardens and the Premises. The wall is approximately 3.2m high, 45m long and 550mm wide. Its construction is "historic in nature" with sandstone facing to one side and a stone-tied solid sandstone and brick face to the other side. Rubble fills the cavity between the two leaves and there are sandstone coping flags atop.
10. Mr Chapman inspected the wall on 11 October 2023 and states that a 15m section of the wall to the rear of no.25 had collapsed into the garden. The collapse had destroyed a large proportion of the hedges running along the rear of the wall. To the west of the collapsed section, the remaining wall exhibited loose masonry and appeared to be leaning toward no.23's garden. To the east of the collapsed section, the remaining wall leaned towards no.25's garden.
11. Mr Chapman recommends in his report that the remaining loose stone or brick and loose coping stones should be removed, that the remaining wall to the east should be stepped down in height from just past the extent of the lean, approximately 5m, from the open wall edge, diagonally down to the upper garden level. A similar take-down is anticipated to the section of the wall immediately behind the poplar tree.
12. The Applicant asks the Tribunal to grant retrospective dispensation because of the urgency of the works and the consequences upon the lessees of any delays. It is stated that the works were urgent because the materials of the walls were scattered all over the floor, mostly in a neighbour's garden and cause a health and safety risk. It is stated that there could also be financial implications to the residents as the neighbour could sue for damages. It is said that there is also a security risk as the development is now open for access.
13. None of the Respondents has notified the Tribunal of any objections to the application.

The Law

14. 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.

15. 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.*

16. “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).

17. 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.

18. 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

19. 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 these observations and nominations.
20. 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.
21. 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.
22. 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.
23. In the present case the works appear to be urgent and necessary to avoid further damage and the risk to the health and safety of the occupants of the land at either side of the wall. Balanced against this is the prejudice that might be suffered by the leaseholders in not being able to assert their rights under the s.20 consultation process. In the present case, none of the leaseholders has raised any objections and the scope of the dispensation is limited to clearing the site and making it safe.
24. The Tribunal notes that after the application was made, the Applicant wrote to the leaseholders on 24 November 2023 reporting that the initial works had been completed at a cost of £3,600.00. Options are set out for future works that include rebuilding the wall in stone work, erecting a fence to the same height as the wall and planting a cherry tree hedge. It is for the leaseholders to decide on the nature of the future works and to comment on the proposals and the

contractor to be engaged to carry them out. These are not matters for this Tribunal to consider.

25. 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

26. The application is allowed and the Tribunal determines that compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with.

28 March 2024
Judge P Forster

Annex - List of Respondents

1. H Hassan
2. N Lines
3. S Lake
4. R Adams
5. D Wall & R J Crowson
6. S Willey
7. Z Warhurst

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.