



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

Case Reference

MAN/30UK/LDC/2023/0053

Premises : **Winckley House, 16 Cross Street, Preston,
PR1 3AJ**

Applicant : **Winckley House RTM Company Limited**

Representative : **Homestead Consultancy Services Ltd.**

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

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the works set out in a quotation dated 6 March 2023 prepared by TJ Lift Solutions Ltd. for the “partial lift refurbishment”.

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 received on 10 August 2023 is made in respect of Winckley House, 16 Cross Street, Preston, PR1 3AJ (“the Premises”). The Premises is a seven-storey converted building off Winckley Square in Preston. The building was converted in 2020 and contains 76 apartments.
3. The Applicant, Winckley House RTM Company Ltd., is the management company to whom the service charge is payable.
4. The Respondents are the residential leaseholders of the apartments within the Premises. A list of the Respondents is annexed to this decision.
5. The apartments 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 December 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.

Grounds for the application

9. The Applicant states that when the Premises was converted new lifts were not fitted. The lifts within the building are old and work intermittently. The financial burden of maintaining and repairing the lifts falls upon the Respondents who are having to pay surcharges to keep the system working. The works that are required are urgent. The Applicant seeks dispensation to place an order for the refurbishment works to be carried out as soon as possible while a valid quotation is in place to avoid additional delays and any unnecessary increase in expenditure.
10. The proposed works are set out in a quotation dated 6 March 2023 prepared by TJ Lift Solutions Ltd. where the proposed “partial lift refurbishment” works are itemised.
11. The Applicant wrote to the Respondents on 7 August 2023 in the form of a s.20 part 1 consultation. This details the proposed works. The full consultation process has not been followed.
12. The Applicant asks the Tribunal to grant dispensation because of the urgency of the works and the consequences upon the lessees of any delays.
13. Only one of the Respondents, Mr Stephen Tickner, has responded to the application. Copies of correspondence between him and the Applicant’s managing agent, Homesteads Consultancy Services, have been provided to the Tribunal. Mr Tickner says that he has been “blindsided” by the application and states that this is an attempt by Homestead to hide matters its own incompetence. Mr Tickner suggests that the Applicant wants to “jump at a price” provided by the “incumbent contractor”.

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 inconvenience to the residents of the Premises. It is stated that the lifts were not currently working. 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, only Mr Tickner has raised any objections. Dispensation does not deprive him of the right to subsequently challenge either the scope of the works or the costs that are incurred. Mr Tickner who does not reside in the Premises does not address the urgent need to get the lifts working.
24. The Tribunal concludes that the balance falls in favour of the Applicant when assessing the benefits to the residents as against any prejudice that may be suffered by the Respondents. Any prejudice is mitigated by their ability to challenge the costs of the works when a service charge is raised.

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 attached

Keepfirm Properties LLP
Eran David
Mr H Chen
Lynn Sedgwick
Daniel Grzybek
Waheeda Patel
Maria Florencia Garcia
Weymuff (UK) Ltd
Roi Meir Ayon
Kronicle Investments Ltd
Mr SE & Mrs AJ Tickner
Tom Vardi
Charles Du Bueger
Norwood Estates NW Ltd
Wong Cheung Yee Florence & Ho Chi Sing
WonderSpace Universal Ltd
Niv Ovdar
James Fielder
Zakir & Arzamiya Kasmani
Lina Stumbryte
Jensen Apartments Ltd
SK Luxury Properties Ltd
Graham & Janet Powis
Paloma Beach Limited
Lilach & Erez Yasher
GG-347-468 Limited
Creative Venture Solutions Limited
Oxbridge Property Associates Limited
Majuzo Ltd
PBP Properties
David & Galia Tal
Saima Valli
Roey Levi & Ilay Golan
Jensen Apartments
Sana Patel
Amazing Choice Ltd
MCP Properties Limited
Adi Ben Aderet Dahan & Yaniv Dahan
Christina & Guy Campion
JK Investments Ltd
Graciela Noemi Marchionniand & Barbara Castro
Ukki Properties Ltd
Evgenia Elkind
Izehiokhon Andrew & Uhunamure Ogheneochuko Akpengbe
Deer Property Ltd
Efrat Miller Flenner & Yonatan Flenner

Lior Yagil & Avigail Yagil
Ziv Adar
Nicola Webb & David Jones
Lior Zilber
Michael & Denise Booth
Minesh Patel
Sanjay Sanghani
Irit Cohen & Tal Cohen
Purnima Dasani
Sukanta & Anuranda Biswas
Michael & Sasha Ferreira

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.