



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

Case Reference : MAN/00FF/LDC/2023/0079

Property : The Residence, Bishopthorpe Road,
York, YO23 1DQ

Applicant : The Residence (York) Management Company
Representative : J H Watson Property Management Ltd

Respondents : Various Leaseholders

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

Tribunal members : I Jefferson
K Usher

Date of Decision : 14 May 2024

DECISION

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent repairs to balconies to prevent water ingress damaging two apartments internally as well as compromising the integrity of the building of the premises known as The Residence, Bishopthorpe Road, York, YO23 1DQ.. The work to which the application relates is to remove parts of the existing material, to the terraces spanning apartments 509–515 and replace. Although similar work is required to all of the south facing terraces they have not yet resulted in internal damage, and do not form part of the application.

Background

1. This is a retrospective 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 30 November 2023 is made in respect of the former Terry’s Chocolate Factory, built 1924, and converted to 166 private residential dwellings in 2017, which includes 1, 2, and 3 bedroom apartments, spread over 6 floors (The Premises).
3. The Applicant, is The Residence (York) Management Company, represented by Watsons, a property management company.
4. The Respondents are the residential leaseholders of the flats within the Premises. A Specimen Lease (and Counter Lease) in respect of 31 The Residence, dated 31 January 2017 is enclosed with the application. A list of the Respondents is annexed to this decision.
5. The flats located within the Premises are subject to long residential leases. All the leases are believed to have been 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 7 February 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 a 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. The directions included at paragraph 6 a provision that required the Applicant to write a statement of case explaining the need for the application to be copied to the Respondents informing them of the application and providing them with information about the application process. Paragraph 8 provided that any respondents who opposed the application were to submit written representations to the Tribunal. Paragraph 9 allowed the Applicant to submit a final written statement in reply before the Tribunal made its determination. The Tribunal also drafted a letter dated 7 February 2024 to all Leaseholders relating to the application, and required the Applicant to send.

Grounds for the application

9. The Applicant's case is that the works were urgently required to repair balcony terrace materials to apartments 509–515 to urgently stop internal water ingress to various apartments. Had the applicant complied with the Section 20 construction process the works would have been delayed by around 3 months resulting in both further damage and greater costs.

The contractor who has undertaken the works was Ideal Roofing Ltd and the cost was £17,500 plus VAT. Three other contractors were approached to quote, but all declined.

The cost will be covered by the properties reserve fund meaning no additional ad hoc charge is required to be levied on leaseholders.

Given the urgency of the works and the specialist nature of the work, and a lack of suitable contractors, the Applicant has only been able to obtain one quote in the time available.

The Applicant states that it did not have sufficient time to comply with the consultation process set out in s.20 of the Landlord and Tenant Act 1985 which would have taken several months. Further, as the Applicant has only managed to obtain one quotation for the works it would not have been able to comply with the second stage of the consultation process which requires the landlord to obtain at least two estimates. It is submitted that there is no prejudice to the Respondents by granting dispensation. The works were carried out on an urgent basis and were in the best interest of the Respondents.

10. The Applicant asks the Tribunal to grant dispensation in respect of the works, which it considers to have been so urgent as to warrant avoiding the delay that compliance with the consultation requirements would have entailed.

The Law

11. 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.

12. 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.

13. “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).

14. 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.

15. 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

16. 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 leaseholders 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 leaseholders with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
17. 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.
18. 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.
19. 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 if any prejudice had been caused to leaseholders by not undertaking the full consultation while balancing this against the risks posed to leaseholders 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.
20. In the present case there is no doubt that the works were necessary and pressing for the occupiers of the apartments. The Tribunal finds that it was reasonable for the works to proceed without the Applicant first complying in full with the s.20 consultation requirements. The balance of prejudice favoured permitting such works to proceed without further delay.

21. The Applicant served the Respondents with the application and none of the Respondents have responded to it.
22. 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

23. The Tribunal determines that compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the balcony repairs as detailed in this decision.

Chairman

14 May 2024

Annex - List of Respondents

Mr J D M & Mrs L Robinson
De Facto Reports Ltd
Ms A J Leedham
Westerdale Properties Ltd
Mr T Kuzio & Mrs O Jajecznyk
Ms H J Sirrell
Mr & Mrs C Craig
Ms B A Desmond
Mr J Roe & Miss S Mortimer
Mr & Mrs Birkett
Ms A Balogh
Mr R & Mrs P Kaschula
Mr A & Mrs V McKevitt
Ms F M T Thom
Mr D & Mrs V Moore
Mr & Mrs M Deans
Miss W Bridges & Mr J Wardle
Mrs J A Yarker
Mr S P & Mrs C A Sandig
Mr A B Betteridge & Ms H E Podmore
Mr R Gomersall & Miss G Matthews
Mr G & Mrs G Gammack
Mr I & Mrs E Yarrow
Mr C W MacNeill & Ms S P Carson
Mr H & Mrs J Bennett
Mr R P & Mrs J A Moor
Mr N P & Mrs A M Skelton
Mr D Lynch & Miss J Thompson
Mr R Creswick
Mr K & Mrs T Roberts
Mr A D Howard
Mr M Ireland
Mr T & Mrs K Busby
Mr J Blenkinsopp
Mr D Goodwin & Mrs R Pressland
Mr D E & Mrs M J Over
Simon Myles Pharlap Property
Mr J & Mrs P Wong
Miss S Hutchinson
Miss C Soave
Ms S M Haywood
Mr G Y & Mrs P A Lahoud

Mr J & Mrs C Stansfield
Mr R & Mrs A Stretton
Mr D Austin & Miss F Giles
Mrs P Taylor
Mrs N Wastberg
Mr V & Mrs J Andrie
Ms A Darlington & Ms M Parks
Mrs J O Stenton
Ms S Ali
Mr I P Coates
Mr J Brewster
Mrs C Smith
Ms M Rainforth
Mr S Thakore
Mr M Colligan
Mr B Irving
Mr A & Mrs D Holman
Mr D P Hargreaves
Mr M & Mrs J Richer
Mr W & Mrs JC Gunnell
Ms S Liu
Mr J & Mrs J M Gray
Mr I & Mrs J Hessay
Mrs P Coverdale
Ms L A Harvey
Ms L Read
Ms C Thomas
Mrs P Butcher
Mrs B Lealan
Mr W & Mrs K W Harrison
Mr J Clapham
Mr C & Mrs K Jackson
Maine Road Properties Ltd
Ms P Holley & Ms L Sissons
Dr A Alexiou
Ms R Connolly
Mr K & Mrs D Hutchison
Mr C Pemberton
Ms I Heald
Ms C A Reynolds
Mr J Shaw
Mr M & Mrs A Graves

Annex - List of Respondents (continued)

Executors of the late Mr G B Gillham	Mr W & Mrs R Bosanquet
Miss Y Wagstaff	Mr D & Mrs S Bolton
Mr R & Mrs A Adams	Mr C & Mrs M A Plowman
Mr M & Mrs M Inns	
Ms J M Earl	Mr N & Mrs S Conyers
Mr M & Mrs C Gibson	Ms H G Hart
Mr M J Robinson & Ms N N Ling	Mrs J Lodge
Mr N Anderson & Ms E Jerrard	Mr P Baugh
Mr D J & Mrs L N Thompson	Mr A & Mrs C Smith
Mr J A & Mrs C A Swanwick	Mr R Merrett
Mr A Scopelitti	Mr M T Redmond
Mr R G Martin & Mrs E M Martin	Mrs P Grant
Mrs R Wordsworth	Mr J & Mrs C Mahan
Mr C Becker	Mrs P M Holt
Mr M & Mrs M A McManaman	Mrs Y Lawton
Mr G & Mrs S Grewer	Mrs I Baugh
Mr A & Mrs H Spreckley	Ms N Dawson
Mr D W & Mrs W S Singleton	Mr M & Mrs M Denton
Mr R Garland	Mr P & Mrs G Smith
Mr I & Mrs M Senior	Little Tyke Ltd
Mr J & Mrs P Weatherill	Mr T C & Mrs S A Nash
Mr K C & Mrs E Harvey	Ms J L Pickering
Ms L R Hampshire & Mr R J Parsons	Ms M Grant
Ms N Pettersson Watsberg & Mr M G Pettersson	Ms M J Tyson
Mr M Brown & Miss S Shaw	Mr R Schofield
GEM Holdings (York) Limited	Mrs D P Mack
Mr D R S Taylor & Ms F E Gordon	Mr M G & Mrs L Webb
Ms F L Thomas	Mr A Balkham
Hestia (York) Limited	Mr I Sirrell
Mr M & Mrs E Harrison	Mr A Haskins
Mr J & Mrs A Blakeston	Mr N Pells
Mrs R Middleton	Mr G & Mrs R Mann
Miss D Saywell	Mr R & Mrs K Burns
Mr M E R Munton & Mrs L T Munton	Mrs J Birch
Mr M Livesey	Mr D & Mrs A Dudley
Endofelicitas Ltd	Mr R & Mrs E Calpin
Mr D & Mrs M Powell	Mr T Turner
Mr D Rawlinson	Mr P & Mrs J Power
Mr A & Mrs A Lister	

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.