



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

Case Reference	: MAN/ooCA/LDC/2024/0005
Property	: Scarisbrick Court, Scarisbrick New Road, Southport PR8 6QF
Applicant	: Redwing Living Limited
Respondents	: The leaseholders of the individual properties, a list being annexed to the application
Type of Application	: Application under Section 20ZA Landlord and Tenant Act 1985
Tribunal Members	: Mr H Thomas FRICS Mr J R Rimmer (Chairman)
Date of Decision	: 26th July 2024

DECISION

Order : **The dispensation sought by the Applicant from compliance with Section 20 Landlord and Tenant Act 1985 is granted.**

Application and background

- 1 This is an application under Section 20ZA Landlord and Tenant Act 1985 (“the Act”) seeking a dispensation from the requirement to fulfil the consultation requirements of Section 20 Landlord and Tenant Act 1985 (further clarified by the Service Charges (Consultation Requirements) (England) Regulations 2003) in relation to what are termed “qualifying works” within that section.
- 2 The Applicant is the freeholder of the development and the party responsible for the provision of the services, including the lift, the subject matter of the application, required by the leases of the flats within the development.
- 3 The works in question are the installation of a replacement lift system at the subject property consequent upon the failure of the original lift. The works are set out in some detail within the Applicant’s case and appendices attached thereto.
- 4 The Applicant has taken the view that seriousness of the situation was such as to require them to embark upon immediate work without resort to the consultation process set out by Section 20 of the Act. Initial failure of the existing lift occurred in May 2023 and although a new control panel was installed further work was identified. Consultation with the insurers of the lift and a report from an independent consultant engineer confirmed the need for the lift to be replaced.
- 5 The Tribunal now has before it an application for retrospective dispensation from the consultation requirements of Section 20 of the Act in respect of the provision of the new lift the Applicant having undertaken the following processes
 - The initial appraisal and subsequent reports mentioned in paragraph 3.
 - Subsequent invitations to 6 contractors to engage in a tender process for the works required.
 - Receipt of two tenders from that total of 6 invitees.
 - Examination of the tenders against the specifications provided.
 - The placing of the contract with one of the tendering contractors (Classic Lifts).
 - Establishing a timetable for commencing works in February 2024, to be completed by April 2024.

- The engagement of a structural engineer to identify certain additional work to the lift shaft, resulting in delayed completion of the project Until May 2024

6 The Applicant identified a situation whereby there would be no prospect of it being able to comply with Section 20 of the Act and an application was made for dispensation from those requirements, that Application being dated 15th December 2023.

7 Directions were provided by the Tribunal as to the future conduct of the application the service of the application and service upon each of the 27 leaseholders of flats within the Scarisbrick Court development, with appropriate information as to the nature of the issues arising within the application, how to respond and with further additional information publicised within the building.

8 No formal response has been provided by any of those leaseholders, either supporting or opposing the Application, but the Applicant, within its submissions has included details of a residents' meeting held with the Applicant's representatives which appeared to outline some concerns, not necessarily with the need for a new lift, but the way in which the situation had initially arisen.

9 Also within those submissions are copies of a number of documents providing updating information to the leaseholders as to progress with the identification of the problem, the manner of resolving it and the timescale for completion of the work.

10 The tribunal understands that the contract entered into after the tender process identified costs of slightly over £100,000.00, with an additional £10,000.00 in consultant and project management fees. It does not appear that the tribunal has been appraised of final costs, including the cost of additional work identified by the structural engineer.

11 Funding would be provided by way of £50,000.00 accumulated in the sinking fund for the building and the balance recovered in due course through the service charge

The Law

12 Section 18 Landlord and Tenant Act 1985 defines both a "service charge" and also "relevant costs" in relation to such charges whilst Section 19 of the Act limits the amount of those costs that are included in such charges to those which are reasonably incurred in respect of work which is of a reasonable standard.

13 Section 20 of the Act then proceeds to limit the amount of such charges that may be recoverable for what are known as "qualifying works" unless a consultation process has been complied with. By Section 20ZA of the Act qualifying works are any works to the building or other premises to which the service charge applies

and the relevant costs would require a contribution from each tenant of more than £250.00.

14 Section 20ZA(1) particularly provides that:

“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 The consultation process envisages a multi-stage approach by requiring:

- (1) A notice of intention to carry out qualifying works
- (2) The right of the leaseholders to nominate a contractor
- (3) The need for two, or more, estimates
- (4) The need to give reasons for the eventual choice of contractor.

It is in respect only of the last of these that the Applicant seeks its exemption.

Determination

16 The Tribunal determined this matter without a hearing on 26th July 2024. The Tribunal is able under Section 20ZA Landlord and Tenant Act 1985 to determine that on an application to dispense with some or all of the consultation requirements under Section 20 if it is satisfied that it is reasonable to dispense with those requirements.

17 On the evidence available to it the Tribunal is able to make its determinations on the basis of the following:

- (1) Having invited 6 contractors to tender for the required work and receiving only two tenders it was reasonable for the Applicant to adopt a view that there would be considerable difficulty in complying with the requirements of Section 20 within a reasonable timescale.
- (2) This was of particular importance in a development where the leaseholders are seniors living in a property with services adapted to their likely needs and mobility and where a lift is an essential requirement.
- (3) There would be a clear benefit in moving forward to a position where the proposed systems would be in place sooner rather than later.
- (4) There is nothing to suggest any objection from leaseholders. The Tribunal is fortified in this view by the manner in which issues were raised at the meeting in October 2023, but not revisited during these proceedings.

- (5) The Applicant has done all that it reasonably can to lessen the impact of the problem on leaseholders. The Tribunal would accept that with the benefit of hindsight a speedier solution may have been possible, but at the time decisions were made they were reasonable.
- (6) The Applicant has also engaged in a process of providing information to the leaseholders, as evidenced by the documentation provided, notwithstanding non-compliance with Section 20 itself.
- (7) There is nothing apparent from the situation as now presented to the Tribunal that would indicate any real prejudice to the leaseholders by the Applicant proceeding to authorise the work in the manner it did. The Tribunal is satisfied the work was required. The costs outlined appear to have been incurred in good faith and nothing suggests that any savings would have been made in adhering to the Section 20 process, compared to what has been done.

18 Even though the Tribunal is indicating that it is appropriate to dispense with compliance with the consultation requirements this does not prejudice the future rights of any leaseholder to challenge the reasonableness of any costs incurred in respect of the relevant works under Section 27A Landlord and Tenant Act 1985 relating to the service charges for the year(s) in question.

19 In the circumstances the Tribunal is satisfied that it would be reasonable to dispense with the requirements to comply with Section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

J R RIMMER

Annex A -List of Respondent Leaseholders

1. Mr D Stirrup & Mrs D Stirrup (Executor for)
2. Mrs J Lord
3. Mrs J Jackson
4. Mr A Brown & Mrs I Brown
5. Mrs H Rawlings
6. Mr C Ryan
7. Ms C Cooper
8. Mr E Hatton (Executors for) & Mrs M Hatton
9. Mrs M Rimmer
10. Mr B McWhirr & Mrs AE McWhirr
11. Rev C Stratton & Mrs E Stratton
12. Mrs J Bairsto
13. Mr I Fletcher
14. Mr J Breeze & Mrs J Breeze
15. Mrs S A Flynn (Executors for)
16. Mr P Rodwell
17. Ms K Sweeney
18. Mr R A Hemming & Mrs D Hemming
19. Mr A J Beggs
20. Mrs J E Williams
21. Mrs I Nickson
22. Mr C Ensor & Mrs S Ensor
23. Mr R J Fairclough
24. Mrs M Dwan
25. J Aspinall Personal Representative & Mrs B Aspinall (Executors For)
26. Mrs P Hulme
27. Mr M Humphries & Mrs C Humphries