



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

Case Reference : **MAN/30UD/LDC/2023/0026**

Property : **Ashworth House, Manchester Road, Burnley
BB11 1HB**

Appellant : **Grey GR 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 J Gallagher
Mr J R Rimmer (Chairman)**

Date of Decision : **27th October 2023**

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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 works in question are modifications to the fire alarm systems at the subject property consequent upon the service of an enforcement notice by Lancashire Fire and Rescue Authority (“the Authority”). The works are set out in some detail within the Applicant’s case but broadly described as “fire alarm works”.
- 3 The Applicant has taken the view that seriousness of the situation was such as to require immediate work to be carried out without resort to the consultation process set out by Section 20 of the Act. Although the works in question form only part of the suite of requirements contained within the enforcement notice they were identified by the Applicant as those satisfying its own view in relation to immediacy.
- 4 The Applicant apparently accepted that all work was considered urgent but the Authority had imposed a “waking watch” requirement in respect of the building, at considerable cost to the leaseholders, recoverable within the service charges, until the alarm works were considered sufficient.
- 5 This is therefore an application for retrospective dispensation from the consultation requirements, the work having been carried out in the Autumn of 2021 and Spring of 2022. The reasons for the application and its justification are provided in the statement of Philip Parkinson dated 5th April 2013.
- 6 The Application was progressed initially by directions from the Tribunal as to the service of the application upon each of the leaseholders, 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.
- 7 It would appear from the papers before the Tribunal that there may have been a very small number of leaseholders who may not have received these original notifications, requiring further copies to be served as appropriate.

- 8 No formal objections to the application have been received from any of the leaseholders to this application, although it is not clear from the paperwork provided by the Applicant the extent to which information was provided to one leaseholder who would appear to have been a successor in title to the former leaseholder who received notification. The Tribunal is satisfied that the Applicant's solicitor is able to identify that person from the information it has provided.
- 9 No further submissions were made to the Tribunal in the course of the Application, other than those contained in the application itself, but the application provided extensive information as to the nature and extent of the difficulties that had arisen.
- 10 In particular, the Tribunal noted that no evidence had been forthcoming as to how the situation had arisen, or indeed the general level of awareness of potential fire safety issues prior to the intervention of the Authority, and what, if any steps had been taken in the past to try to prevent the situation arising, although it acknowledges that once it had arisen a remedy was necessary. The Tribunal considered that this information might have been useful as background to the need for such urgent action now to have arisen.
- 11 The Tribunal also notes the observations on behalf of the Applicant concerning the time eventually taken to complete the works and the extensions provided by the Authority to the time limits for implementation.

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 24th August 2023. 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 it is satisfied that it is reasonable to dispense with those requirements. The Tribunal has done so notwithstanding the observations made at paragraph 10 above, in view of what it regards as the self-evident difficulties arising from the unfortunate timing of the problem at one of the heights of the pandemic.

17 On the evidence available to it the Tribunal is able to make the following determinations:

- (1) An enforcement notice had been served by the Authority that required speedy attention by the Applicant.
- (2) The speed with which work could be carried out would have a direct cost benefit for leaseholders by allowing earlier withdrawal of the “waking watch”
- (3) There would be a further earlier benefit from a fire safety perspective in having the proposed systems in place sooner rather than later.
- (4) There is nothing to suggest any objection from leaseholders.
- (5) The Applicant has done all that it can to lessen the impact of the problem on leaseholders.
- (6) It has also engaged in a process of providing information to the leaseholders, notwithstanding no-compliance with Section 20 itself. .
- (7) There is nothing apparent from the situation as it is now presented to the Tribunal that would indicate any real prejudice to the leaseholders by the Applicant proceeding to authorise the work as soon as possible.

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.
- 20 The Applicant has confirmed to the Tribunal that the new occupier of Flat 55, has been informed of these proceedings and the outcome.

J R RIMMER (CHAIRMAN)

