



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

**Case Reference** : **MAN/16UE/LDC/2021/0058**

**Property** : **Wesley Court, Church Road, Harrington  
Workington CA14 5QA**

**Applicant** : **Wesley Court Residents Management Company  
Limited**

**Applicant's Representative** : **ARC Property Management**

**Respondents** : **The residential leaseholders of the Property (See  
Annex)**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 20ZA**

**Tribunal Member** : **Judge Bennett**

**Date and venue of hearing** : **Determined without a hearing**

**Date of Decision** : **12 April 2022**

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**DECISION**

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## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the replacement of the copings and lead flashing, lifting sandstone corbel into position and associated scaffolding works at the Property.**

## REASONS

### Background

1. On 3 October 2021, an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made by Wesley Court Residents Management Company Limited and relates to premises known as Wesley Court, Church Road, Harrington, Workington CA14 5QA (“the Property”). The Applicant owns the head-leasehold interest in the Property and is the landlord under the long leases of the residential apartments within it. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which retrospective dispensation is sought concern the erection of scaffolding intended to catch any loose material which may fall off the roof along with repairs to the Property. These repairs include the replacement of the damaged copings and lead flashing and work to mechanically lift sandstone corbel into position.

5. Each of the Respondents have been given notice of the application and have been sent a copy of the Applicant's supporting evidence. The Tribunal has not received a response from any Respondent.
6. I have determined this matter following a consideration of the Applicant's case but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.

### **Grounds for the application**

8. The Tribunal did not inspect the Property, but I understand it to be a large detached former Wesleyan Chapel, built in the 19<sup>th</sup> Century, converted into 12 flats in 1989 for residential use.
9. The Applicant's case is that following strong winds, a significant amount of masonry had fallen off the roof of the subject Property and a section 78 notice under The Building Act 1984 was served by Allerdale Borough Council as a result. The notice set out a schedule of emergency works including making the area safe through the erection of scaffolding to catch any falling material, and repairing and removing any loose material to remove further danger. The Applicant submits that without the withdrawal of the section 78 notice, residents were unable to return to their homes and Allerdale Borough Council were unable to reopen the road at the front of the property. Consequently, in these circumstances, it was not possible to complete a consultation with leaseholders or obtain alternative quotes before the scaffolding was erected. The Applicant indicates that they were keen to progress the emergency repairs to ensure that other copings on the roof did not suffer the same fate causing further damage to persons or property and that there was a high risk of further damage if the work was not completed before the wind and rain returned during the winter months.
10. In addition, the Applicant argues that the leaseholders of the Property indicated that they were keen for the repairs to be carried out as soon as possible to avoid unnecessary scaffolding hire costs. It was agreed between the parties that the costs would initially be met from the reserve fund and will be refunded if an appeal against the insurers is successful. The Tribunal has since been notified that following an appeal made by the Applicant to the Financial Ombudsman, a decision has been sent from the Financial Ombudsman's office to the Insurance company stating that the insurance claim is to be paid. A response has not been received from the insurance company.

## Law

13. 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.*

14. 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.*

15. “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 on 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).

16. 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.*

17. 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.

## **Conclusions**

18. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work. 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 it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely

to be tipped in favour of dispensation in a case in which there is 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, the works concerned were clearly of an urgent nature in light of the section 78 notice served by Allerdale Borough Council and the potential further damage that could have been caused to the building by strong winds and rain in the upcoming winter months. There is no evidence that the Respondents have been, or would be, prejudiced by the lack of compliance with the consultation requirements. I therefore conclude that retrospective dispensation should be granted.
21. I also note that, whilst the statutory consultation requirements were not complied with, the Respondents were previously informed about the damage caused to the Property and the work required to rectify this to ensure the safety of the residents and public. Additional information and a quote for the cost of carrying out the works were provided to the Respondents prior to and in the course of these proceedings. The applicant sought feedback from the Respondent leaseholders in relation to the costs by 20 July 2021 prior to the less urgent work commencing. No responses were received by any Respondent, and they have not objected to the application at any stage.
22. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. I make no findings in that regard.

Signed: L Bennett  
Judge of the First-tier Tribunal  
Date: 12 April 2022

### **ANNEX (List of Respondents)**

Joseph Sandwith  
Carole Irving  
Mr Bell

Denise Marsden  
John Stobbart  
Martin Bell  
Anthony Armstrong  
Chantelle Collins