



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

Case Reference : **MAN/30UQ/LDC/2021/0067**

Properties : **Grange Apartments, 75-105 Garden Close
(odd numbers only), Poulton Le Fylde, FY6
7WG**

Applicant : **Grange Apartments (LPG) Limited**

Applicant's Representative : **FMS Estate Management Limited**

Respondents : **Various Residential Long Leaseholders (See
Annex)**

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

Tribunal Member : **Judge Bennett**

Type of Application : **For dispensation of the statutory
consultation requirements: Landlord and
Tenant Act 1985- section 20ZA**

Date and Venue of Hearing : **Determined without a hearing**

Date of Decision : **13 April 2022**

DECISION

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 a damaged automatic opening vent system at the Property.

REASONS

Background

1. On 20 October 2021 an application was received by 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 Grange Apartments (LPG) Limited, the landlord of Grange Apartments, 75-105 Garden Close (odd numbers only), Poulton Le Fylde, FY6 7WG (“the Property”). 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 dispensation is sought concern urgent remedial works to replace a damaged automatic opening vent system required to be operational for the safety of residents in the event of a fire within the building.
5. 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

6. The Tribunal did not inspect the Property, but I understand it to be a purpose-built apartment block of 16 units.
7. The Applicant's case is that the automatic opening vent system at the Property that extracts smoke from the communal corridors of the building in the event of a fire had failed. The Applicant submits that whilst the system is not operational, the building and the residents are at risk. It has been highlighted that delays had already been caused due to a lapse in time in obtaining quotes for the work due to Covid-19, the availability of qualified surveyors and the availability of contractors able to install such specialist equipment. The Applicant stated that the building insurers required the work to be completed as soon as possible and the Applicant considered that the work should commence as soon as possible for the safety of the occupiers and visitors in the event of an emergency. It has been argued that it was not seen as practical to wait an approximate 90 days to complete a full s.20 consultation, so upon receiving all quotes from companies able to complete the work, an application to the Tribunal for dispensation was made. The Applicant highlights that creating further delays could have caused serious injury or loss of life by smoke inhalation caused by condensed smoke in the communal areas due to the lack of extraction in the event of a fire. The Applicant raises a further concern that the lack of extraction could also hinder the fire services in their role of fighting a fire.

Law

8. 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.
9. 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.*
10. "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).

11. 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.

12. 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.

Discussions and 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.
19. In deciding whether to dispense with the consultation requirements, the Tribunal must focus on whether the leaseholders have been, or would be, prejudiced by the lack of compliance with the consultation requirements. If there is no such prejudice, dispensation should be granted.

20. In the present case, the works concerned are clearly of an urgent nature, and 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 dispensation should be granted.
21. In reaching this conclusion, I have taken account of the objection to the application which has been raised by two of the Respondent leaseholders: Mr S Hackett & Mr E Hackett. I make the following observations about the points made in their response:
 - 21.1 Mr S & Mr E Hackett raise concerns regarding the poor management and lack of early warning about the issues surrounding the fire alarms and the costs that would be involved with rectifying them. They point out that the need for the replacement of the automatic opening vent system was known prior to the making of this Tribunal application and therefore an application post completion of the work is a waste of time and resource for all parties as it should have been submitted in June 2021. It is argued that the managing agents, FMS Estate Management Limited were aware of the issues with the fire alarms as early as May 2021 and it was evident at this time that there would be a large cost that would require a consultation to be carried out. Mr S & Mr E Hackett complain that it was approximately 5 months before the managing agent made the property owners aware of the issues and the safety concerns and despite receiving the first quote on 5 June 2021, they did not inform the leaseholders of the potential dangers and costs of the work until 5 October 2021. The Respondents submit that there was ample opportunity to consult with the leaseholders and question what the Applicant hopes to achieve by this application as there is already an agreement in place to pay for the costs. Mr S & Mr E Hackett state that they have every intention of paying these costs. Mr S & Mr E Hackett submit that had they been notified beforehand, they would have had more time to budget for the expense of the repayment plan that they believe is unaffordable and they could have notified their tenants of potential safety concerns.
 - 21.2 While the complaint made may well be a valid one, the relevant question for me to determine presently is whether it is reasonable to dispense with the consultation requirements. Despite complaints regarding the previous delays, there is no suggestion of prejudice caused by failure to comply with the consultation requirements and therefore dispensation should not be withheld.
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: 13 April 2022

ANNEX
(List of Respondents)

Respondent	Address
Mrs Beverley A Yates	84 Mains Lane, Singleton, Poulton Le Fylde FY6 7LD
Mr Darren Lee Cooke	Apartment 77, The Grange, Garden Close, Poulton Le Fylde FY6 7BQ
Ms N Turner	Apartment 79, The Grange, Garden Close, Poulton Le Fylde FY6 7BQ
Mr Michael Mahmud Aziz	Apartment 81, The Grange, Garden Close, Poulton Le Fylde FY6 7WG
Mr Alan Moffat	83 Garden Close, Poulton Le Fylde, FY6 7WG
Mr K & Mrs B Chee	Apartment 85, The Grange, Garden Close, Poulton Le Fylde, FY6 7WG
Mr S & Mr E Hackett	204 Hardhorn Road, Poulton Le Fylde FY6 8ES 33 Highcross Road, Poulton Le Fylde FY6 8BB
Exec Mr K Gregory Sharon West	93 Garden Close, Poulton Le Fylde, FY6 7WG
Mr Paul Thomas Lancashire	Apartment 95, The Grange, Garden Close, Poulton Le Fylde, FY6 7WG
Dr S K Ahmed & Dr A Kamran	56 Pottery Gardens, Lancaster LA1 3TB
Mr & Mrs R Wilson	5 Highley Hall Croft, Clifton, Brighouse, West Yorkshire, HD6 4LL
Mr Benjamin Rigney	Apartment 101, The Grange, Garden Close, Poulton Le Fylde, FY6 7WG
Mr Z Murray	Apartment 103, The Grange, Garden Close, Poulton Le Fylde, FY6 7WG
Mrs S Galsworthy	9 Hardhorn Way, Poulton Le Fylde FY6 8AE