



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

Case Reference	:	CHI/21UC/LDC/2015/0032
Property	:	Andwell Court, Trinity Place, Eastbourne, East Sussex BN21 3DB
Applicant	:	Retirement Lease Housing Association
Representative	:	Unrepresented
Respondent	:	Various leaseholders as listed in the schedule accompanying the application
Representative	:	Unrepresented
Type of Application	:	To dispense with the requirement to consult lessees about major works
Tribunal Members	:	Mr Jeremy Donegan (Tribunal Judge) Mr Nigel Robinson FRICS (Valuer Member)
Date of Inspection and Determination	:	29 September 2015
Date of Decision	:	08 October 2015

DECISION

Decisions of the tribunal

- (A) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the following works (‘the Qualifying Works’) at Andwell Court, Trinity Place, Eastbourne, East Sussex BN21 3DB (‘the Building’):

Replacing the windows and the adjacent curtain walls for two thirds of the front of the Building (south westerly elevation)

- (B) No terms are imposed on the grant of dispensation.

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 22 July 2015.
2. Directions were issued on 24 July 2015. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 29 September 2015 following the tribunal’s inspection of the Building.
3. The Applicant supplied the tribunal with a bundle of relevant documents in accordance with paragraph 9 of the directions. This included copies of the application, the directions, the Applicant’s statement of case, response forms, relevant correspondence and a sample lease.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Building is a purpose built residential block of independent-living retirement flats with a resident estate manager. The Applicant is the freeholder of the Building and the Respondents are the leaseholders of the 56 flats in the Building.
6. The Applicant seeks prospective dispensation in relation to the Qualifying Works, which are said to be urgent.
7. The grounds of the application were set out in the original application form and in the Applicant’s statement of case and can be summarised as follows:

- (a) The Applicant partially completed a section 20 consultation for the renewal of all windows and the adjacent curtain walls at the Building in late 2014 and early 2015. The cheapest tender was from Everest Commercial Windows and was for a total sum of £361,677.31, including supervision fees and all VAT.
 - (b) A number of the Respondents objected to the proposed works and the Applicant issued an application to the tribunal under section 27A of the 1985 Act, for a determination of reasonableness. That application was compromised upon the basis that the works would be phased over two years, a new surveyor would be appointed, the works would be re-tendered and the applicant would seek dispensation, to shorten the new consultation process.
 - (c) Given the terms of the compromise, the Applicant needs to start the section 20 consultation afresh or obtain dispensation before commencing the first phase of works. The first phase involves renewing the windows and curtain walls for two thirds of the front of the Building. The remaining windows and curtain walls will be renewed in the second phase.
 - (d) The Applicant and the Respondents are keen to start the works as soon as possible, as there is water penetration through some of the windows. This is having a detrimental impact on the fabric of the Building and the interior of some of the flats. The water penetration is likely to accelerate with heavier rainfall and winds over the winter months. The Applicant wishes to abridge each stage of the section 20 consultation process to 14 days and seeks dispensation from the full consultation requirements.
8. Paragraph 6 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they supported the application. Completed forms were filed by the leaseholders of thirty of the flats, all of whom indicated their support. There was no opposition to the application and no written representations from the Respondents, identifying any prejudice or proposing any terms as a condition of granting dispensation.

The inspection

9. The tribunal inspected the Building on the morning of 29 September 2015. It is a purpose built five-storey block of 56 retirement flats with mainly brick elevations under a pitched roof constructed almost 30 years ago. The window frames were of UPVC, understood to be the originals installed when the Building was constructed, with twelve feature vertical sections of UPVC incorporating windows to the front and rear elevations. Of these twelve sections, three to each of the front and rear were of a triangular bay style, with the remaining ones being in

three banks of square bays with two vertical UPVC runs each, either side of a brick panel, two to the front and one to the rear. Externally, the UPVC showed signs of some age discolouration but no major defects were noted from the external ground level inspection.

10. The front of the Building faces a south westerly direction and the rear therefore faces north easterly.
11. The estate manager was unable to attend the inspection but the tribunal were shown around by Ms N O'Brien who is one of the carers at the Building and Mr L Hesling, who is the leaseholder of Flat 56 and the chairman of the Residents' Association. Inspections were made of windows within Flats 56, 22 and 12, apparently being representative of the problems being suffered.
12. Flat 56 generally was suffering minor problems with water penetration through the window frames. Internally there appeared to be a solid wall below the frames but externally there was UPVC cladding, hence the description of UPVC curtain walling.
13. The windows in Flat 22 were of similar design but here damage could be seen to the wallpaper to the left hand side and under the window as a result of damp/water penetration problems. The leaseholders, Mr and Mrs Haddow, advised that it was necessary to keep towels available to cover the window sills internally whenever it rained to absorb the water that would otherwise run onto the floor and damage the carpet. Some signs of deterioration could be seen to the skirting board on the left hand side of the bay. One double glazing unit was also noted to have failed.
14. The tribunal then inspected Flat 12 and saw a triangular bay window in the sitting room. The leaseholder, Mrs Howard, advised that water had been penetrating at high level causing the bay ceiling to bulge. This had been repaired and was dry at the time of inspection. Mrs Howard explained that water did still penetrate through the window frames when it rained, making the window sills wet. Four double glazing units were noted to have failed. The bedroom window, which was a simpler casement style UPVC window in a brick section of walling, was also inspected. The tribunal noted some water damage to the left hand window reveal and that a further double glazing unit had failed.
15. All the flats inspected were on the front, south westerly elevation which is understood to suffer the prevailing winds and also the greater water penetration problems.

The tribunal's decision

16. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act, in respect of the Qualifying Works. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

17. The tribunal was not supplied with any surveyor's report or specification, giving precise details of the proposed works or establishing an urgent need for the works. It therefore relied upon its inspection of the Building.
18. The problems noted were not amongst the worst that the tribunal has seen but it was clear that the windows are reaching the end of their effective life. Replacing them should not only reduce the risk of water penetration to the flats internally but also give peace of mind to the retired residents.
19. Embarking upon a full consultation exercise will take 3 months or longer and will significantly delay the commencement of the first phase of works.
20. All of the Respondents that responded to the application have indicated their support and they account for over 50% of the flats in the Building. There have been no objections and none of the Respondents has suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the Respondents has suggested that any terms should apply to the grant of dispensation.
21. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the Respondents from seeking a determination of their liability to contribute to the cost of the Qualifying Works, pursuant to section 27A of the 1985 Act, should they wish to do so.
22. Given the absence of a specification, the definition of 'Qualifying Works' at paragraph (A) of this decision is necessarily brief. For the avoidance of doubt dispensation is only granted for the first phase of the window and curtain wall replacement, at the front of the Building. It is not granted for phase two.

Name: Tribunal Judge Donegan **Date:** 08 October 2015

Appeals

1. Any party wishing to appeal 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 which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. 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
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are 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.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or

- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.