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

Case Reference : **MAN/00CK/LDC/2015/0016**

Property : **Dolphin Quays, Liddell Street, North Shields,
NE29 6HF**

Applicant : **Dolphin Quays (North Shields) Limited**

Representative : **SLC Solicitors**

Respondents : **Various Leaseholders (see Annex A)**

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

Tribunal Members : **Judge J Oliver
Mr M Bennett (Valuer)**

Date of Determination : **24 September 2015**

Date of decision : **3 October 2015**

DECISION

Decision

1. The application for dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 with regard to remedial works to the retaining walls is granted.

Reasons

Background

2. This is an application made by Dolphin Quays (North Shields) Limited ("the Applicant") for the dispensation of the consultation requirements imposed by section 20 of the Landlord & Tenant Act 1985 ("the Act") with regard to remedial works to retaining walls relating to Dolphin Quays, Liddell Street, North Shields ("the Property").
3. The Respondents to the application are various leaseholders of the Property ("the Respondent").
4. The application is dated 19 June 2015 and in respect of which directions were issued on 8 July 2015 providing for the filing of statements and which further provided for a paper determination upon the issues.
5. Neither party requested a hearing.

The Law

6. Section 20 of the Act provides:
 - (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) a 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*

7. The Service Charge (Consultation Requirements) (England) Regulations 2003 specify the amount applying to section 20 qualifying works as follows:

6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

8. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented then an application can be made to a tribunal pursuant to section 20ZA of the Act.
9. Section 20ZA of the Act provides:

(1) Where an application is made to a tribunal for a determination to dispense with all or any 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

Submissions

10. In its statement to the Tribunal the Applicant has explained it is the freeholder of the development at Dolphin Quays, a development of 123 apartments and town houses. The Respondents are various leaseholders of the Property.
11. The remedial works, to which the application relates, is the repair of a walkway and river wall abutting the River Tyne to both alleviate and prevent erosion below the water level. The process has been on-going for a number of years, beginning in 2011 when a depression in the walkway was discovered and investigations began. In 2013, following consultation with engineers, design and tendering work commenced, followed by the necessary repair work and which continues to date. The works have largely been completed and other work, found during the execution of the repairs, has been undertaken within the original cost.
12. The Applicant has undertaken a consultation pursuant to section 20 of the Act and which is properly detailed within the application. However, one of the leaseholders, Mr Alan Ridley, has complained this has not been properly carried out.
13. In its statement the Applicant acknowledges there have been defects in the consultation process but said those were minor and had not materially affected the process. The defects were as follows:
 - a. the consultation period set out in the First Stage 1 Notice was 28 days from the date when it was sent out; the First Stage 1 Notice was dated 26 October 2012 but unfortunately was not sent out until 30 October 2012 ;*

b. the Second Stage 1 Notice allowed exactly 30 days from the date of the covering letter for the consultation process thus not allowing time fro service;

c. the Second Stage 3 Notice referred to the consultation pursuant to the Second Stage 2 Notice as ending two days earlier than was provided for by then Second Stage 2 Notice;

d. reference made in the First Stage 2 Notice to observations received pursuant to the First Stage 1 Notice was terse and lacked detail.”

14. The Applicant did not become aware of the technical defects in the consultation until the end of 2013/2104. The work had been identified in May 2012 and had been considered urgent and necessary for the benefit of the Property. It was further stated:

“Had the Works not been carried out the consequence would have been the collapse of the riverside wall resulting in damage to the building’s foundations and affecting the values of the properties by rendering them unsellable and potentially invalidating the properties’ insurance cover due to the failure to maintain.”

15. The Applicant’s argument is that the defects in the consultation process are “minor and technical”, they have not caused any significant prejudice, nor any financial loss. Further, the Applicant has provided information regarding all the work and opportunities have been provided for this to be commented upon. Finally, the Applicant relies upon the payment of the service charge to fund its ability to run the Property having no outside source of income. Any failure to collect the cost of the remedial work within the service charge would cause serious difficulties.
16. The Tribunal received written submissions from Mr Ridley in respect of the application, but from none of the other leaseholders who are Respondents to the application. A further letter from solicitors instructed by Mr Ridley simply confirmed his statement and asked for the application to be struck out.
17. The statement received from Mr Ridley was dated the same date as that of the Applicant and therefore was not in reply to it. His statement raised an issue that the Tribunal had predetermined the issues without the matter being properly heard and consequently the application should be struck out. In this, he refers to the directions made on 8 July 2015 providing for the future conduct of the application. There are deficiencies on the application form. Further, Mr Ridley objects to the statements made within the application that has now been circulated to other leaseholders, thus undermining his credibility. Finally, all the parties involved with the “Design Construction and Administration of Dolphin Quay as a Residential have abused their relevant positions of Authority/Influence to the substantial detriment of the Lease Holder.”

Determination

18. Where an application is made to the Tribunal to dispense with all or any of the consultation requirements in relation to qualifying works, it must determine it is reasonable to dispense with the requirements and, if the works have been carried out, whether, in granting dispensation, prejudice has been caused.
19. The works contained within the application are qualifying works within the meaning of section 20. In this case, the consultation process has been carried out but, by the Applicant's own admission, there were defects in the process.
20. The Tribunal considered the submissions made by Mr Ridley but did not consider them persuasive. In support of his request for the proceedings to be struck out, there appears to have been a misunderstanding of the necessary procedures in making the application. The directions issued by the Tribunal were not a predetermination of the issues, but were given as permitted by Rule 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to allow for the effective management of the matter. Further, in order to provide for natural justice, it is necessary for the Tribunal to relay to all interested parties all evidence made within the application. Consequently, the Respondent's submission the distribution of the application to other parties was prejudicial and undermined his credibility was not relevant. The Tribunal did not accept the further arguments made were relevant to their determination upon the issue of consent.
21. The Tribunal noted the requirements of Section 20 had, largely been complied with and the defects in that process were not major. The Respondent had been informed of all the necessary works and any observations had been considered. No evidence was submitted by the Respondent to suggest the cost of the works was unreasonable or unnecessary. The works were said to be urgent and nothing had been said to the contrary. The works had now been largely completed. The Tribunal did not consider there to be any prejudice to the Respondent if the application was granted.
22. The Tribunal therefore determines that dispensation from the requirements of Section 20 should be granted. In doing so, the Tribunal makes no findings whether any service charge costs resulting from the works are reasonable or payable. The lessees of the Property can challenge those issues upon a separate application made pursuant to Section 27A of the Act.

Leaseholders**Annex A**

<u>Name</u>	<u>Property No(s).</u>	<u>Name</u>	<u>Property No(s).</u>
Miss B C Nortyn	1	Mr J R Lewis	50
Mr & Mrs J Rice	2	Ms Wakenshaw	51
Mr C R Smith	3	Ms C I Smith	52
Mr S Common	4	Mr G Smithson	53
Mr R Bryan	5	Mr R Sheehy	54
Miss D Holmes	6	Miss R Clark	55
Mr J M Van Der Vlugt	7	Mr & Mrs M J Watson	56
Mr G L May	8	Mr M E Roberts	57
Mrs J Blight & Mrs E Trevethick	9	Mr & Mrs S G Wolstencroft	58
Ms D Elliott	10	Mr J K Graham	59
Execs of Mrs M Bowman-Jones	11	Mr H J Jagers	60
Mr & Mrs A Thain	12	Mrs C Smith	61
Mr & Mrs M A Kay	13, 40	Mrs D D Mantz	62
Mrs C Turner	14, 37, 46	Mr & Mrs P Evans	63
Mrs M G McCarthy	15	Mr & Mrs J Adamson	64
Mr & Mrs R Birkett	16	Mr M Foster	65
Mr & Mrs G L Elgie	17	Mrs K Lazenby	66
Mr & Mrs S J Renold	18	Mr L Paddison	67
Mr & Mrs R McGurk	19	Mr & Mrs C M Johnston	68
Mr & Mrs J P Ferry	20	Mr & Mrs B Parritt	69
Mr & Mrs J Nixon	21	Mr J N Brown & Mr P R Bell	70
Mr T P Curran	22	Mrs H C Thompson	71, 74
Mr & Mrs C G Wells	23	Mr & Mrs E P Makarona	72
Ms A K E Ayris	24	Mr & Mrs W A Palmer	73
Mr A White & Mrs P Herring	25	Mr & Mrs T Byrne	75
Ms L V Preston	26	Mr & Mrs J F Slater	76
Mr S K Harris	27	Mr J R Furlong	77, 78
Miss G L Richardson	28	Mr J Laidler	79
Mr & Mrs W J Fairley	29	Mrs N Anderson	80
Mrs G Peace	30	Mr L Paterson	81
Mr J Seagrave	31	Mr R Crulley	82
Mr A Ridley	32	Mr & Mrs D M Anderson	83
Mr & Mrs K Bishop	33	Mr & Mrs A C Carr	84
Dr J Tarbit	34	Mr & Mrs K Paisley	85
Mr & Mrs M Blake	35	Mr D Surtees	86
Mr, Mrs & Miss Bateman	36	Mrs A Luke	87
Mr C N Rae	38, 116	Mr & Mrs P D Nath	88
Mrs D Hope	39	Mr & Mrs W O Maddison	89
Mr & Mrs N J Green	41	Mr & Mrs S D Robinson	90
Mr P M Youll	42	Mr D R Boyd	91
Mrs J Ferris	43	Mr K Mortimer	92
Mrs H S Newton	44	Mr D Wardhaugh	93
Mr & Mrs A H Douglas	45	Mr P E Neill	94
Miss S E McBride	47	Mrs E Taylor	95
Mr L M Coburn	48	Mr A D Reed & Ms S Forster	96
Mr & Mrs A D Gray	49	Mr & Mrs J M Hunter	97

<u>Name</u>	<u>Property No(s).</u>	<u>Name</u>	<u>Property No(s).</u>
Miss L Dunkley	98	Mr H A Petty	111
Miss J L Wilson	99	Ms L Carr & Mr G R Bamber	112
Prof H & Mrs Marsh	100	Messr R & J Patterson	113
Mrs G Redden	101	Ms C H Hughes	114
Mrs V A Wilson	102	Mr T R Brown	115
Mr & Mrs M E Robinson	103	Mrs S Ranson	117
Ms D Holmes	104	Mrs H G Donnelly	118
Mrs K S Curran	105	Mr & Mrs N F McLaughlin	119
Dr C A Fitzsimmons	106	Mr S Sharp	120
Mr A Bousher & Ms E Scott	107	Mr K Slater	121
Mr L Gibson	108	Mr & Mrs S Todd	122
Mr S C B Clayton	109	Mrs J Hub	123
Mr & Mrs B Turner	110		