



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

Case Reference : **MAN/00CX/LDC/2015/0012**

Property : **Apartments at Moorland Ridge
Butler Lane
Baildon
Shipley
BD17 6PG**

Applicant : **Moorland Ridge Management
Company Limited**

Representative : **Walter Ingham & Co LLP**

Respondents : **The leaseholders of the Property
(see Annex A)**

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

Tribunal Members : **Judge J Holbrook
Judge M Davey**

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

Date of Decision : **6 July 2015**

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 partial re-roofing of the Property (as those works are more particularly described in paragraph 4 below).

REASONS

Background

1. On 4 June 2015 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 Moorland Ridge Management Company Limited, which is the management company for the premises known as Moorland Ridge, Butler Lane, Baildon, Shipley BD17 6PG (“the Property”). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the eight apartments comprising the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The Property comprises a converted church, built around 1880, which now comprises eight apartments. The building, which is built of stone under a slate roof, is five storeys high. The works in respect of which a dispensation is sought concern the replacement of those parts of the slate roof which were not replaced in 2013. It is understood that the works in question have already been commenced.
5. On 15 June 2015 Judge Bennett issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened in the absence of the parties on the date of this decision to determine the application. Documentary evidence in support of the application was provided by the Applicant’s representative. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. Although the roofing works carried out in 2013 were apparently successful, slates have since been dislodged from other parts of the roof and have landed on an apartment balcony. Because of the height of the Property, the Applicant is concerned about the possibility that further slates will fall from the roof and about the obvious health and safety risks this would pose. As a consequence, scaffolding has already been erected to catch any falling slates.
8. Although the Applicant's intention had been to undertake the second phase of the re-roofing project in five to ten years time, the above concerns have brought matters to a head sooner. Due to the significant cost of attempting even a minor repair (particularly in terms of the cost of scaffolding) the Applicant has decided to undertake the rest of the re-roofing project immediately. A roofing report prepared in 2012 estimated that the cost (at that time) of the work which is now proposed was £28,251.
9. It is also noted that the costs of the scaffolding currently in place to protect against falling slates will increase the longer the scaffolding has to remain.

Law

10. 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.

11. 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.

12. "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).

13. 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.

14. 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

15. The Tribunal must decide whether it was 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 (or management company) 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. 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.
16. 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.

17. We note that in the particular circumstances of the present case, there is a clear need for urgent action to be taken in order to prevent the risk of serious injury and/or damage to property. In addition, there is a need for the works to be completed quickly in order to minimise the amount of time for which scaffolding is required and thus to keep the costs of scaffolding within reasonable bounds. We also note that the Respondents have been informed of the proposal to carry out the works and that none of them have objected. There is no evidence that the Respondents have been prejudiced to date by the lack of opportunity to be consulted about the works. The balance of prejudice therefore favours dispensing with the consultation requirements.
18. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we 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. We make no findings in that regard.

Annex A

Leaseholders	Flat – Moorland Ridge
Mr R R Doughty	Flat 1
Mr & Mrs R J Burnett	Flat 2
Mr D Houldsworth	Flat 3
Mr C McQuade	Flat 4
Mrs A B & Mrs K L Palmer	Flat 5
Mr M Hall	Flat 6
Mr K Judge	Flat 7
Mr M Buttery	Flat 8