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

Case Reference : **MAN/36UG/LDC/2016/0003**

Property : **“Kirbys”, East Terrace, Whitby
North Yorkshire YO21 3HB**

Applicant : **Mrs Rosalie Abel**

Representative : **N/A**

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

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook
Judge S Duffy**

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

Date of Decision : **1 March 2016**

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 and ancillary to the repair, refurbishment and renewal of the Property's roof.

REASONS

Background

1. On 1 February 2016 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 relates to "Kirbys", East Terrace, Whitby, North Yorkshire YO21 3HB ("the Property") and was made by Mrs Rosalie Abel of Abel Property Services. By a decision dated 18 November 2015 ("the Appointment Decision") the Tribunal has appointed Mrs Abel as manager in respect of the Property for a period of five years with effect from 1 December 2015.
3. The Respondents to the application (listed in the Annex hereto) are the long leaseholders of the 20 residential flats within the Property.
4. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
5. The works in respect of which a dispensation is sought concern urgent remedial works to the roof of the Property. Mrs Abel describes those works in the following terms:

"Full repair, refurbishment and renewal of roof, including asbestos removal, structural repairs, insulation, reinstatement of parapet gutters and full re-covering in accordance with Listed Building Consent, together with all associated works including scaffolding, CDM management, remedial works to flats affected by water ingress, this list not being exhaustive."
6. On 4 February 2016 the Tribunal 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 (four Respondents gave express consent to the application being determined without an oral hearing), and the Tribunal accordingly convened in the absence of the parties on the date of this decision to determine the application.

7. Written submissions and documentary evidence in support of the application were provided by Mrs Abel. One Respondent (Mr Carmichael) expressed his support for the application, stating that the proposed work to the roof is extremely urgent. However, a second Respondent (Ms Middleton) submitted written representations opposing the application. These are considered further below. No submissions were received from the other Respondents.
8. The Tribunal did not inspect the Property but we noted the description of it given in the Appointment Decision.

Grounds for the application

9. Mrs Abel asserts that dispensation from the consultation requirements is sought in order to progress the refurbishment of the roof, which is now urgent. She says that the roof has undergone “a catalogue of expensive and temporary repairs” since 2007, but that these have failed to stem the ingress of water into the Property. Water continues to penetrate and to cause damage, both to the structure of the roof and to the interior of various flats and communal areas within the Property. Mrs Abel now proposes to re-tender for the necessary works to provide a more comprehensive and long-term solution to these problems and wishes to progress the matter as quickly as possible without complying with the consultation requirements. She says that such compliance is unnecessary given the history of relevant consultation with the Respondents.

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 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 (or manager) 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. In the present case, it is clear that there have been long-standing problems with the roof of the Property. Its condition was described by the Tribunal in the following terms at paragraph 25 of the Appointment Decision:

“The roof of the building was in a substantial state of disrepair, with water penetrating through the roof into flats situated below it. The Tribunal inspected in particular Flat 10 on the second floor: water was penetrating through the ceilings in the kitchen and living room, and being caught in buckets and other receptacles. There had been extensive collapse of the ceilings as a result.”

18. The Tribunal went on to find that the landlord (which the Respondents own and control collectively) was in breach of its obligation to keep the roof in repair, and it is apparent that this finding was instrumental in the Tribunal’s decision to appoint a manager. The Tribunal charted the history of disputes between the leaseholders concerning the way in which the Property should be managed, and about repair of the roof in particular. In June 2007 a quotation had been obtained for the replacement of the roof and, in August 2013, a building condition report commissioned by a number of leaseholders recommended its complete replacement. Notwithstanding this, patch repairs only continued to be carried out. The Tribunal expressed the view (at paragraph 75 of the Appointment Decision) that this was because the majority of the leaseholders, whose flats were not (yet) directly affected by the state of the roof, were reluctant to incur the substantial expenditure needed to replace the roof.
19. By the time the Tribunal heard the application for the appointment of a manager, there had been extensive consultation about what needed to be done. It appears that a number (if not all) the stages of the consultation process listed in paragraph 14 above were complied with. Potential contractors had been identified and quotations had been obtained for the replacement of the roof. However, the works were put on hold pending the outcome of the tribunal proceedings and Mrs Abel informs us that the tenders have now lapsed. She also says that there are numerous elements of necessary work which were omitted from the original tender exercise. Mrs Abel has commissioned further expert reports on the condition of the roof and necessary remedial action and copies have been provided to the Respondents.
20. Although the need for remedial action appears clear, we have considered the objection to the dispensation application raised by Ms Middleton (leaseholder of Flat 18). Ms Middleton makes the valid points that (1) previous consultation about roof repairs took place against a background of discord among the leaseholders, and (2) the works now proposed by Mrs Abel are more extensive than those previously consulted upon. However, neither of these points negate the fact that there have been long-standing problems with the roof which continue to cause serious inconvenience to some leaseholders, or the fact that there has been a great deal of previous discussion about the matter. To the extent that the need for additional works has been identified by virtue of the most recent investigations, these are detailed in the various reports which have been provided to all the Respondents, including Ms Middleton.

21. In addition, although Ms Middleton objects to the present application, she says that she would not want this to delay the necessary roof repairs. She says that she would like Mrs Abel to provide leaseholders with:

“a simple document of no more than 2 sides and written in lay-person’s language of what her plans are for the roof. This document should include the nature of all the problems and what she is planning to do to resolve them. This would include the exact nature of works such as scaffolding, noise, dirt, building access, which will have a direct impact on residents. The document should include timescales, in order that residents know what to expect to be happening when.”
22. Ms Middleton proposes that this document forms the basis of a 30 day consultation exercise.
23. It appears, therefore, that Ms Middleton is advocating a modified and truncated version of the statutory consultation requirements in this case. However, we do not consider that it would be helpful for the Tribunal to attempt to re-write the consultation requirements in this way. Nor do we consider the fact that the total cost of the works is presently unknown to be a reason to refuse dispensation. Ultimately, the question of how much is payable by each Respondent is one which must be determined by reference to their lease, and dispensation of the consultation requirements does not increase the Respondents’ contractual liability. Nor does it prevent them from disputing the extent of their liability at a future date.
24. Finally, Ms Middleton makes the point that other parts of the Property are also likely to require repair and that leaseholders will wish to gain an overview of the likely works and their cost implications. This is undoubtedly true and Mrs Abel will wish to heed not only the request for clear and concise information about the roof works, but also the Tribunal’s direction (at paragraph 80.7 of the Appointment Decision) that she draw up and circulate an action plan for the Property generally. Nevertheless, these are not matters upon which it would be appropriate to make the grant of dispensation conditional.
25. In the circumstances, we are satisfied that it is reasonable to dispense with the consultation requirements. However, this 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

List of Respondents

<u>Name</u>	<u>Interest</u>
Mrs Boswell	Flat 1
Mr Storm	Flat 2
Mr Craven	Flat 3
Mrs Harrington	Flat 4
Mrs Bracegirdle	Flat 5
Dr Thomasson	Flat 6
Mr & Mrs Ingham	Flat 7
Mr Laws	Flat 8
Mr & Mrs Carmichael	Flat 9
Mrs Bracewell & Mrs Gaze	Flat 10
Mr Smith	Flat 11
Mr & Mrs Neville	Flat 12
Mr & Mrs Peart	Flat 14
Mr & Mrs Maclean-Smith	Flat 15
Mrs Wilson	Flat 16
Mr Swann	Flat 17
Mrs Middleton & Mr White	Flat 18
Ms White	Flat 19
Mrs Turner	Flat 20
Ms Mullan	Flat 21