



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HE/LDC/2021/0038

Property : Marina Court, 9-19 Mount Wise, Newquay,
Cornwall TR7 2EJ

Applicants : McCarthy & Stone Retirement Lifestyles Limited

Representative: McCarthy & Stone Management Services

Respondent: The Lessees

Representative: ---

Type of Application: Application for dispensation from consultation
requirements - Section 20ZA Landlord and Tenant
Act 1985 ("the 1985 Act")

Tribunal Member: Judge P J Barber

Date of Decision: 24 June 2021

DECISION

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Decision

- (1) The determination of the Tribunal, in accordance with the provisions of Section 20ZA of the 1985 Act, is to dispense with all the consultation requirements in relation to qualifying works at the Property, namely the repairs to three architectural canopies to the fifth storey balconies at the Property.

Reasons

INTRODUCTION

1. The application received by the Tribunal is for a determination whether to dispense with the consultation requirements arising under Section 20 of the 1985 Act, in relation to work to three architectural canopies to fifth storey balconies, which are structurally unstable and causing water ingress to the flats below.
2. Directions were issued on 11 May 2021, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no such objections have been made and accordingly, the matter is being determined on the papers.
3. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

4. Section 20ZA(1) of the 1985 Act provides that :-

“(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

WRITTEN REPRESENTATIONS

5. The directions provided that the application should stand as the Applicant`s case, and for the Respondent lessees to complete and return a reply form by 1 June 2021 indicating whether or not they opposed the application. The directions further provided that those parties not returning a reply form and those agreeing to the application, would be removed as Respondents. The directions additionally provided that the Applicant would have the right of reply to any objections by 8 June 2021, and that unless a hearing was called for, the Tribunal would determine the application on the papers received.
6. The directions issued in this matter also required the Applicant to send a copy of the application and the directions to each of the lessees by 25 May 2021. The directions included the form for lessees to complete and return to the Tribunal by 1 June 2021, to indicate whether or not they opposed the application. The Applicant confirmed to the Tribunal by email dated 28 May 2021, that the lessees of 17 flats, being Flat Numbers 6, 9, 11, 19, 21, 32, 33, 35, 39, 40, 43, 44, 46, 47, 49, 50 & 54, had returned forms, in each case indicating that they agreed with the application.

CONSIDERATION

7. The Tribunal, has taken into account the application with attachments and all the papers provided by the Applicant.
8. The issue for determination under Section 20ZA of the 1985 Act, is simply as to whether or not it is satisfied that it is reasonable to dispense with all or any of the consultation requirements of Section 20 of the 1985 Act.
9. The Applicant describes how three architectural canopies to fifth storey balconies have become structurally unstable, with water ingress occurring to the flats below, necessitating urgent repair works. The Applicant was required to serve all the lessees with copies of the applications and the directions; whilst the directions allowed for any lessee who was opposed to the application, to make representations, the Tribunal has not been notified of, or received any such objections. The Tribunal notes the absence of objections to the application by any of the lessees who responded; no evidence has been placed before the Tribunal to the effect that any lessee is or would be likely to be prejudiced as a result of dispensation being granted. The Tribunal also takes into account the statement by the Applicant that the work is required for urgent reasons to prevent water ingress.
10. The Tribunal is satisfied that it would be reasonable to dispense with all consultation requirements in relation specifically to these canopy works, given the absence of objections and the apparently urgent need for such works, so as to prevent water ingress. The Tribunal accordingly determines that all the consultation requirements arising under Section 20 of the 1985 Act in relation to the canopy works to the fifth floor at the Property, are dispensed with.
11. In making this determination, the Tribunal makes it clear to the parties that it is concerned only with whether or not it is reasonable to dispense with statutory consultation requirements, and that such determination does not concern the separate issue as to whether any service charges arising will be reasonable or payable and which the leaseholders will remain entitled to challenge if they may be so minded, at the relevant time.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.

4. The application for permission to appeal must 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.