



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

Case Reference : **MAN/30UF/LDC/2014/0021**

Property : **Lindsay Court, New Road, Lytham St Annes,
FY8 2SR**

Applicant : **Lindsay Court New Road**

Respondents : **Various (see attached list)**

Type of Application : **Application for dispensation of consultation
arrangements**

Tribunal Members : **P J Mulvena LLB DMA (Chairman)
J Faulkner FRICS**

**Date and venue of
Hearing** : **20 March 2015 at H M Courts and Tribunal
Service, Prudential House, Topping Street,
Blackpool, FY1 3AB**

Date of Decision : **20 March 2015**

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DECISION

That the application under Section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of the consultation required by Section 20 of the Act in respect of works proposed to be undertaken at Lindsay Court, New Road, Lytham St Annes, FY8 2SR, be approved, subject to the following conditions:

1. The Applicant shall provide all the Respondents with a copy of the report produced by Liverpool John Moores University and a copy of the survey reports produced by Leeming Associates.
2. The Applicant shall provide all the Respondents with full details of the grants available in connection with the proposed project, including, but not limited to, an indication of the level of income stream which might reasonably be expected by each of the Respondents and the estimated capital sum which might reasonably be expected from the sale of the benefit, followed by confirmation of the sum actually received and details of all bids.
3. The Applicant shall furnish all the Respondents with costed specifications of all works to be undertaken prior to the commencement of any works, together with a planned programme of works and a statement of account in respect of the availability of adequate funding to commence and complete the works.

4. The Applicant shall provide a monthly monitoring report to all the Respondents giving information as to the progress of all works, any amendments or variations to the specifications, any variations in cost and anticipated slippage in the planned programme.
 5. The Applicant shall nominate a person to liaise with the Respondents in respect of all and any queries, complaints, suggestions or other communications in respect of the works and shall inform the Respondents of contact details.
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DETERMINATION AND REASONS FOR DECISION

INTRODUCTION

1. By an application dated 19 December 2014, Lindsay Court New Road ('the Applicant') applied for approval under Section 20ZA of the Landlord and Tenant Act 1985 ('the Act') for the dispensation of the consultation required by Section 20 of the Act in respect of works proposed to be undertaken at Lindsay Court, New Road, Lytham St Annes, FY8 2SR ('the Property').
2. The Applicant, as the management company for the Property, gave, or made reasonable attempts to give, notice of the application to the leaseholders of individual flats comprising the Property ('the Respondents'), details of whom are attached to this decision. The Applicant sent notice to the Respondents who have not been contacted direct, 14 in number, to their last known addresses.

THE PROPERTY

3. The Property is a residential development of 96 dwellings in 16 three-storey blocks, some of which are linked. The blocks are built of brick under tile roofs. The common parts comprise the entrance halls and stairs in each block, landscaped areas, estate roadways and car parking areas. The individual dwellings are held under leases which, because of disposals by the original owner on a piecemeal basis, have a number of different formulae for the apportionment of the service charges.

PROCEEDINGS

4. Directions were issued by Judge J Holbrook, sitting as a procedural chairman, on 9 January 2015. The parties have complied with the Directions sufficiently (some of the Respondents have not engaged with the process) to enable the determination of the application to proceed.
5. The Tribunal inspected the common parts of the Property on the morning of 20 March 2015. They were accompanied by Mr D Bentham, Mr K Oldham, Miss L Pendlebury, Mrs J Atkinson and Miss E Hampson of Homestead Consultancy Services Limited, the managing agents for the Property, together with Mr J Alderson of Leeming Associates and Mr K Burke of Avonside, representing the Applicant. None of the Respondents were present or represented at the inspection. The Tribunal found that the development was in a state of disrepair with evidence of long neglect of the external fabric of the buildings, all of which suffered from general dilapidation. There was also much evidence of temporary repairs having been undertaken which had ceased to remedy the problems which they had been intended to address. It was also evident that urgent action was needed to arrest the deterioration of the condition of the buildings and to put in place a planned programme of works to bring the development to an acceptable standard.

6. The substantive hearing of the application was held on 20 March 2015 at H M Courts and Tribunal Service, Prudential House, Topping Street, Blackpool, FY1 3AB. At the substantive hearing, the Applicant was represented by the same persons who attended at the inspection. The following Respondents appeared in person: Mr and Mrs Miles (for Frank K Miles (IOM) Limited), Mr P and Mrs J Rivett, Mr R Chambers, Ms M Flitcroft, Mrs S Flitcroft, Mr H and Mrs L Ferguson, Mr M H and Mrs S Joyce, Mr A Bromiley, Mr S M Conway, L Sellars, Ms S Farrell, Mrs A Jones, Ms C Harbottle, Mrs L Kalina, Mr G Wright, Mr F Mulla and Mrs J Burgess.

THE LAW

7. The material statutory provisions in this case are contained in the Landlord and Tenant Act 1985 ('the Act'). Section 20 of the Act requires consultation by a landlord with tenants in relation to qualifying works.
8. Section 20ZA (1) of the Act provides that 'Where an application is made to a leasehold valuation 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'.

THE EVIDENCE AND THE TRIBUNAL'S CONCLUSIONS WITH REASONS

9. The Tribunal have considered the issues on the whole of the written and oral evidence and the oral submissions now before them and, applying their own expertise and experience, have reached the following conclusions on the issues before them.
10. The Applicant's grounds for seeking the dispensation indicated that the Property had been inspected and found to be in a bad state of repair which was a cause for concern for the health and well-being of the occupiers and visitors. The Applicant has, in discussion arranged with the Respondents, canvassed opportunities to repair the Property and to reduce the costs with grant assistance which has been identified via a company called Avonside.
11. The Applicant has indicated that the major works are dependent on securing grants and that delays might cause the potential for grants to expire or be allocated elsewhere. It was originally estimated that the cost of the works would be £24,713.13 per flat, which would be reduced by grant to £9,638.13. At the hearing, the Applicant produced a higher estimate of expenditure of around of £30,000.00 per flat following a detailed survey by Mr J Alderson, a chartered surveyor with Leeming Associates. The Applicant contends that, even if the works now proposed do not proceed, there will be a need to incur substantial expenditure of the same order to bring the Property into a satisfactory state of repair.
12. In order to avoid more potential damage to the Property, the work has been scheduled to commence on 1 May 2015 and, in anticipation that it will do so, the Respondents have been invoiced for their respective shares of the estimated expenditure, that is, £9,638.13 for each unit of accommodation.
13. In short, the proposal is that the works to be undertaken should include the provision of three Biomass boilers to serve the Property, together with other energy saving initiatives such as solar panels. The provision of Biomass boilers will attract continuing Government grant based on the amount of energy produced. There is a market to invest in futures in such initiatives, potential buyers being attracted by the period over which the grant is paid. The proposal is to sell the benefit of the grant for a capital sum which would be used to fund a significant element of the necessary

repair works. The benefit would otherwise go to the Respondents who would each be guaranteed an income stream.

14. Those Respondents who have engaged with the process have questioned the reasonableness of dispensation of consultation for the following reasons:
 - (a) The sum of money is significant and, if there is no consultation, the Respondents could be prejudiced because of the consequential liabilities.
 - (b) A large proportion of the proposed works appear to be focused on environmental energy schemes which might be considered to be improvements rather than repairs, which raises questions of necessity and recoverability.
 - (c) There does not appear to have been any competitive tendering for the works and no disclosure has been made as to any connections with the Applicant.
 - (d) There is disquiet as to the level of grant and the introduction fee payable to the managing agents.
 - (e) The need for expenditure on such a scale has been questioned – could it not be phased?
 - (f) Some Respondents have indicated that they are simply unable to afford to contribute at the levels demanded.
15. During the course of the hearing a number of the Respondents confirmed that they were opposed to the application for the following reasons:
 - (a) The Applicant had not made out a case for the grant of dispensation or for acceptance that the proposed works of repair were necessary.
 - (b) Only two options have been considered and a wider range of options needs to be explored.
 - (c) The estimates of cost were unrealistic, as evidenced by less expensive quotations obtained on behalf of the Respondents.
 - (d) There is a lack of transparency, firm proposals have not been put forward with some of the issues being vague and no sustainable reasons had been given to justify not seeking competitive tenders.
16. The Tribunal has considered the application against the background of the evidence and submissions and has had regard to the decision of the Supreme Court in *Deajan Investments Limited -v- Benson and others [2013] UKSC 14* in which it was concluded that:
 - (a) The test to be applied is ‘Would the flat owners suffer any relevant prejudice and, if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?’
 - (b) The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - (c) In considering applications for dispensation, the [Tribunal] should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
 - (d) The [Tribunal] has the power to grant dispensation on appropriate terms and can impose conditions.

- (e) The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the [Tribunal] should look to the landlord to rebut it.
- (f) The onus is on the leaseholders to establish:
- (i) what steps they would have taken had the breach not happened and
 - (ii) in what way their rights under (b) above have been prejudiced as a consequence.
- (g) Where relevant prejudice has been established, the [Tribunal] should, in the absence of some good reason otherwise, require the landlord to reduce the amount of service charges claimed to compensate the leaseholders fully for that prejudice.
- (h) Essentially, the [Tribunal] is to reconstruct what would have happened had the consultation been followed properly and in deciding what conditions to impose the [Tribunal] should adopt a 'sympathetic' approach to the leaseholders.
17. The Tribunal recognises that a large number of the Respondents have not engaged with the Tribunal and that there are inherent dangers in drawing an inference that they are in favour of the application, or indeed, of the proposals to undertake the works: silence is not acquiescence. Nonetheless, they have all had a chance to engage with the process and, if any did have misgivings or wished to support the application, they have missed an opportunity to have their views aired and addressed. The Tribunal notes that, in fact only seven occupiers have paid the contribution demanded and a further three have paid in part. It was said that 71 residents had indicated that they supported the project, but it emerged that some of them had agreed because they felt compelled to do so because of the terms of the correspondence which had been received from the Applicant. In these circumstances, it would be unsafe to rely on support which might not have been given freely. The correspondence in question was not before the Tribunal and it is not possible to determine whether the feeling of compulsion was reasonable or caused by a misunderstanding of the correspondence.
18. The Tribunal finds as a matter of fact that substantial works are required to bring the Property into an acceptable state of repair. That was evident from their own inspection on the morning of the hearing and by the evidence placed before the Tribunal on 13 March 2014 when the present manager was appointed. The need for repairs has not been challenged by the Respondents, although they have raised concerns as to the process, the urgency and extent of some of the required repairs and the cost involved. The extent and the cost of the works bring them within the scope of section 20 of the Act and the need, in the absence of dispensation, for consultation. There can be little doubt that, if proposals were to be put forward for consultation, the result would, in any event, be a significant and expensive programme of works to address the condition of the Property as noted at paragraph 5 above. The guiding principle in determining the issue before the Tribunal is not the need for works to be undertaken but the reasonableness of the proposed route to be followed by the Applicant.
19. The Tribunal finds that the proposed method of undertaking the works is of considerable benefit to the Respondents. It will have the effect of reducing the overall expenditure by around two-thirds of the estimated costs. The Tribunal accepts that the element of the proposed works which will trigger the grants is specialist work and that the scope for competitive tendering is limited. The Applicant gave unchallenged evidence that, in addition to Avonside, two other specialist contractors had been

invited to quote but, following site inspections, had declined to do so. In all the circumstances, and subject to appropriate safeguards, the Tribunal finds that this is an exceptional case which merits the award of a contract without competitive tendering. The Tribunal would expect the Applicant to make enquiries with others who had undertaken similar works using the same method of funding to establish the costs for comparison purposes.

20. The Respondents raised a number of issues which are of significant concern and require careful and diligent management by the Applicant to ensure that, as indicated in *Deqjan*, the Respondents are 'protected from paying for inappropriate works or paying more than would be appropriate.' It must be borne in mind at all times that the works are being undertaken to the Respondent's homes and that they will bear the cost of the works by a combination of payments of service charges and forgoing the income stream benefits from the grants. It is essential that they are put in a position where they can be satisfied on a continuing basis from now until the completion of the works that their interests are being safeguarded and that the resources being used, for which they ultimately bear the cost, are carefully husbanded to ensure that all works are, for sustainable reasons, essential and represent value for money.
21. At the present time, there are many aspects of the proposals which are, as submitted by the Respondents, vague and lacking in detail. That is not surprising as there is still much preparatory work to be undertaken. That is being addressed by the commissioning of a report from Liverpool John Moores University and the appointment of Leeming Associates. The outcome of those initiatives needs to be shared with the Respondents so that they have an opportunity to assess the reasonableness and benefits of the proposals.
22. In all the circumstances, the Tribunal finds that it would be reasonable to grant the dispensation subject to conditions which would, effectively, provide for the provision on a continuing basis of the information which, if available, would have been provided during the course of consultation. In that way, the Tribunal is satisfied that the Respondents would not be prejudiced and would have sufficient material to enable them to consider at all appropriate stages whether or not an application needs to be made to a Residential Property Tribunal for a determination that any of the costs are unreasonable, and therefore not payable, on the basis that they have been incurred unnecessarily or at an unreasonably high level.
23. The application is, therefore, approved, subject to the following conditions:
 1. The Applicant shall provide all the Respondents with a copy of the report produced by Liverpool John Moores University and a copy of the survey reports produced by Leeming Associates.
 2. The Applicant shall provide all the Respondents with full details of the grants available in connection with the proposed project, including, but not limited to, an indication of the level of income stream which might reasonably be expected by each of the Respondents and the estimated capital sum which might reasonably be expected from the sale of the benefit, followed by confirmation of the sum actually received and details of all bids.
 3. The Applicant shall furnish all the Respondents with costed specifications of all works to be undertaken prior to the commencement of any works, together with a planned programme of works and a statement of account in respect of the availability of adequate funding to commence and complete the works.
 4. The Applicant shall provide a monthly monitoring report to all the Respondents giving information as to the progress of all works, any amendments or variations

to the specifications, any variations in cost and anticipated slippage in the planned programme.

5. The Applicant shall nominate a person to liaise with the Respondents in respect of all and any queries, complaints, suggestions or other communications in respect of the works and shall inform the Respondents of contact details.

COSTS

24. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:

‘(1) The Tribunal may make an order in respect of costs only –

... (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –

... (ii) a residential property case...

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.’

25. None of the parties has made an application for the award of costs, although there is still an opportunity to do so (see Rule 13(5)). The Tribunal has, however, considered the position on its own initiative and has determined that, on the basis of the evidence at the time of the Decision, there was no circumstance or particular in which any of the parties had acted unreasonably. The Tribunal concluded that it would not be appropriate or proportionate to award costs to any party or to make an order for the reimbursement of any fees.

List of Respondents

Courtesy Title	Interest/ No
Mr S. M Conway	1 ✓
Mr I. J Kalina	2 ✓
Mr S Braid	3 ✓
Mr A. J MacDonald	4 ✓
Mrs L. L Ferguson	5 ✓
Mr & Mrs M Joyce	6 ✓
Elstar Limited	7 ✓
C.E Greenwood & C. J Needham	8 ✓
Miss J. K Raynor	9 ✓
Mr & Mrs J Chapman	10 ✓
Mr G Wright	11 & 14 ✓
Frank K Miles (I.O.M) Ltd	12, 17, 79, 81, 83, 85, 86, 88, 93, 94, 95 & 96 ✓
Mrs A. A Jones	12A ✓
Ms A Campbell	15 ✓
Mr C. M Farnworth	16 ✓
Mrs D. C Gill	18 ✓
Mr K. J & Mrs J. E Burgess	19 ✓
Lindsay Court Securities Ltd	20, 38, 41, 45, 48, 53, 54, 59, 70, 91 ✓
Mr P.M & Mrs A.M Cork	21 ✓
Mr J Davies	22 ✓
Mr K & Mrs G Jones	23 ✓
Mr 7 Mrs R. J Colqhoun	24 ✓
Ms H. L Pollard	25 ✓
Mr D Nixon	26 ✓
Ms C Harbottle	27 ✓
Mr A. D Watterson	28 ✓
Mr H Bleier	29, 42 ✓
Mrs G Cardwell	30 ✓
Mrs S Hawkins	31 ✓
Mrs M Williams	32 ✓
Mr J & Mrs J Wade	33 ✓
Mr C Garrad	34 ✓
Mrs F Garrido	35 ✓
Mr 7 Mrs M. A. J Hall	36 ✓
Mr B McConville	37 ✓
Newhill Investments Ltd	39, 40 ✓
Mr P Battye	43 ✓
Mr A Bromiley	44 ✓
Mr Chambers & Ms L Oulton	46 ✓
Mrs P Taylor & Mrs R. F Taylor	47 ✓
Mr D. R Nelson	49 ✓
Mr J Marshall	50 ✓
Mr Ormerod & Ms Blakely	51 ✓
Mr N. D Davis	52 ✓

