



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

Case Reference : **MAN/00CM/LDC/2017/0015**

Property : **Customs House
Sunniside
Sunderland
SR1 1BA**

Applicant : **Gentoo Group – Residential
Management**

Representative : **N/A**

Respondents : **Mr Taylor & Ms Pic-Taylor,
Mr Baldwin, and Mr Raymond and
Mrs Thompson
BBL Developments**

Representative : **N/A**

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

Tribunal Members : **Deputy Regional Valuer N Walsh
Judge J Hollbrook**

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

Date of Decision : **26 October 2017**

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 repair of the lightning conductor.

REASONS

Background

1. On 18 July 2017 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 on behalf of Gentoo Group, the Landlord of Customs House, Sunnyside, Sunderland SR1 1BH (“the Property”). The Respondents to the application are the long leaseholders of the apartments within 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 works in respect of which a dispensation is sought concern urgent repairs to lightning conductor to the Property, which is currently defective and so poses a significant health and safety, and fire risk.
5. On 13 September 2017 Deputy Regional Valuer Walsh 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. The application was sufficiently detailed to be accepted as the Applicant’s Statement of Case and no submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that the lightning conductor is not functioning and that this has been verified through testing. This poses a significant health and safety, and fire risk to the occupants should the building be struck by lightning. It asserts that repairs are very specialised and the managing agents have only been able to secure one contractor to quote for the work. The Applicant advises that the total cost of the repairs is estimated to be £4,215.43, which when divided up between the respective leaseholds significantly exceeds the statutory £250.00 threshold.
8. We are informed by the Applicant that it has not contacted the leaseholders concerning the proposed works. The Respondent leaseholders were made aware of this application by the Tribunal and invited, through the Tribunal's directions, to participate in these proceedings. To date no response has been received from any of the Respondents.

Law

9. 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.

10. 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.*

11. "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).

12. 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.

13. 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

14. 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 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.

15. 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 residents are not inconvenienced unduly 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.
16. In the present case, there can be no doubt that the works are necessary to meet acceptable health and safety, and fire standards for the occupiers of the Property. We have no hesitation in finding that it is reasonable for these works to proceed without the Applicant first complying with the Section 20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
17. In deciding to grant dispensation, we have had regard to the fact that no objections were raised by the Respondent leaseholders. We therefore find that on the facts presented in this case that it is reasonable to grant dispensation to the Applicant.
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.