



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

Case Reference : **MAN/36 UD/LDC/2017/0030**

Property : **18 Langcliffe Avenue
Harrogate
North Yorkshire
HG2 8JQ**

Applicant : **Langcliffe Place Limited**

Representative : **Mr Briggs, Venture Residential**

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

Representative : **N/A**

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

Tribunal Members : **Deputy Regional Valuer N. Walsh
Judge L. Bennett**

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

Date of Decision : **15 December 2017**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to emergency works to remove asbestos and to repair the flat roof.

REASONS

Background

1. On 8 November 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 Langcliffe Place Limited, who is the freeholder of 18 Langcliffe Avenue, Harrogate, North Yorkshire, HG2 8JQ (“the Property”). The Applicant is the current landlord to the long leaseholders of a converted building providing 5 self-contained flats. The Respondents to the application are the long leaseholders of those flats. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of section 27A of the Act.**
4. The works include the removal of airborne brown asbestos at source and undertaking repairs to the flat roof. In respect of the flat roof this involves the replacement of the current temporary repair, which is allowing water ingress and damage to the building.
5. The Applicant has obtained three different quotations for the removal of the asbestos, which range from £10,950 to £16,758.24 excluding VAT. Similarly three separate quotations for repairing the flat roof, including the erection of scaffolding, range from £3,950 to £11,480 excluding VAT. The section 20 cost threshold for the property is £1,250 and these proposed works will therefore significantly exceed the £250 threshold for qualifying works.

6. On 20 November 2017, 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, and the Tribunal accordingly convened in the absence of the parties on the date of this decision to determine the application. Written submissions and documentary evidence in support of the application were provided by the Applicant. No submissions were received from any of the Respondents.
7. The Tribunal did not inspect the Property.

Grounds for the application

8. The Applicant is seeking dispensation to prevent the further ingress of water into flats and to remove harmful airborne asbestos. The Applicant advises that currently some leaseholders feel unable to move into one flat until the asbestos is removed and are renting alternate accommodation. This is supported by a 'Localised Asbestos Refurbishment & Demolition Survey' produced by Rhodar on 19 September 2017, which details incidences of low, medium and high risks from the asbestos found at the Property.
9. The management agents have held a number of meetings with the leaseholders to explain the works required, the costs involved and the reason for seeking dispensation from the Tribunal. The Tribunal notes that in the minutes supplied the leaseholders unanimously supported the works proceeding immediately and also the Applicant's application to the Tribunal. The Applicant's case is therefore that it is necessary to undertake these works urgently to adequately protect the health and safety of the occupants of the Property and also the structural integrity of the Property itself. It asks the Tribunal to grant dispensation in respect of the works.

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 Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
16. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. 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.
17. In considering whether or not it is reasonable to dispense with the consultation requirements, the Tribunal must consider the prejudice that would be caused to tenants by not undertaking the consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there is or was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation. The prescribed procedures are not intended to act as an impediment when urgent works are required.
18. In the present case, there can be no doubt as to the urgency and pressing nature of the proposed works. This is clearly evidenced by the expert report provided by the Applicant detailing the asbestos found at the Property and the health and safety risks this poses. The fact that some leaseholders feel unable to occupy their flat and are renting alternate accommodation further highlights the gravity of this situation. We also note that, whilst the statutory consultation requirements have not been fully complied with, the consultation process has been started with the Respondents having been informed about the proposed works. The Tribunal therefore has absolutely no hesitation in making an order to dispense with the consultation requirements.
19. In deciding to grant dispensation, we have also had regard to the fact that all the Respondent leaseholders support these works being undertaken as a matter of priority, as evidenced by the minutes and e mails included within the Applicant's Statement of Case. No one has suggested that these works are not required. No leaseholder has suggested that they will be prejudiced if we grant dispensation. It is therefore not necessary to consider whether dispensation should be granted on terms.

20. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision 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 – 18 Langcliffe Avenue, Harrogate, North Yorkshire, HG2 8JQ

Name	Property
Mr & Mrs Aske-Haley	Apartment 1
Mr L & Mr G Reading	Apartment 2
Dr A Bird	Apartment 3
Mr & Mrs Brack	Apartment 4
Mr & Mrs Nelson-Boden	Apartment 5